(24,146)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 120.

HENRY C. HAPAI, G. W. A. HAPAI, AND NELSON K. SNIFFEN, PLAINTIFFS IN ERROR,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

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1 In the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

HENRY C. HAPAI, GEORGE W. A. HAPAI and NELSON SNIFFEN, Plaintiffs,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, a Corporation, Defendants.

Action to Quiet Title.

Amended Bill of Complaint.

To the Honorable Selden B. Kingsbury, Judge of the Circuit Court, Second Circuit:

The undersigned Henry C. Hapai of Honolulu, George W. A. Hapai of Hilo, Hawaii, and Nelson Sniffen of Kula, Island of Maui, Territory of Hawaii, plaintiffs herein, complain of May K. Brown and Arthur M. Brown, her husband, Blanche Walker and John Walker, her husband, Walter F. Dillingham and Robert W. Aiknnson, all of Honolulu, Territory of Hawaii, and Henry Waterhouse Trust Company, Limited, a corporation, organized and existing under and by virtue of the Laws of the Territory of Hawaii, and for cause of action allege.

1st. That the plaintiffs above named are entitled in fee simple absolute to an undivided 29/36 portion of all those premises situated in the Island of Maui, Territory of Hawaii, in the Second Judicial Circuit, described in L. C. A. 3237, issued to Hewahewa, said award describing the ahupuaa of Kaonoulu, described in metes and bounds in schedule "A" attached hereto and made a part hereof, containing an area 5715 acres, except a portion thereof conveyed by deed from Keake to Eliza Sniffen, dated the 3rd day of October 1850,
2 and recorded in the Office of the Registrar of Conveyances in Honolulu, in book 1 of Deeds, pp. 187-188, and recorded October 24, 1850. A copy of the description therein contained is set forth in sc-edule "B" attached and made a part hereof.

And the plaintiffs are entitled to the immediate use and possession of said premises as tenants in common with the defendants herein.

2nd. That defendants above named claim said property adversely to plaintiffs, and the plaintiffs are desirous of having their respective titles adjudicated and quieted.

And the plaintiffs allege that the defendants are necessary parties to the complete determination and settlement of the questions involved herein.

Wherefore, Plaintiffs pray that the defendants be summoned to appear and answer this complaint in the March 1911 term hereof,

unless sooner disposed of by judicial authority; and that they may be required to set up any adverse claims which they may have in and to the aforesaid property, or any part thereof, or any interest therein, legal or equitable, and that the respective ownership of each plaintiff in fee simple absolute of an undivided portion of the premises described be confirmed; that a writ of possession issue for costs of suit and for such other relief as to the Court may seem meet.

Dated at Honolulu, May 28, 1912.

NELSON K. SNIFFEN,
By C. W. ASHFORD,
His Attorney,
HENRY C. HAPAI,
GEORGE W. A. HAPAI,
By LORRIN ANDREWS,
E. MURPHY, &
P. L. WEAVER,
Their Att'ys, Plaintiffs.

C. W. ASHFORD,
Attorney for Nelson K. Sniffen,
LORRIN ANDREWS,
E. MURPHY,
P. L. WEAVER,
Att'ys for Henry C. Hapai and George W. A. Hapai,
Attorneys for Plaintiffs.

3 TERRITORY OF HAWAII,
City and County of Honolulu, ss:

Henry C. Hapai of full age being duly sworn on his oath according to law, deposes and says that he is one of the plaintiffs above named; that he has read the foregoing complaint and knows the contents thereof, and that the same is true.

(S.) HENRY C. HAPAI.

Subscribed and sworn to before me this 28th day of May, A. D. 1912.

[SEAL.] (S.) EUGENE MURPHY,
Notary Public, First Judicial Circuit,
Territory of Hawaii.

4 "SCHEDULE A."

Survey of the Land of Kaonoulu, Kula, Maui.

Commencing at a cross cut on a stone amongst a lot of stones on sand beach a place called Kakahina—From which cross the Government Survey Station Puuhele bears No. 44° 58′ W. true, and running:

1. N. 66° 28′ E. true 2,302 feet along Waiakoa, to a cross cut on a stone; thence,
2. S. 89° 57′ E. true 14,464 feet along Waiakoa to a pile of stones;

3. S. 86° 21′ E. true 5,575 feet along Waiakoa to a pile of stones;

4. S. 46° 21′ E. true 4,803 feet along Alae 1 and 2 to a pile of stones;

5. S. 69° 3′ E. true 3,750 feet along Alae 1 and 2 to a stone marked thus ——> at a rocky place on edge of gulch;

6. S. 72° 50′ E. true 4,146 feet along Alae 1 and 2 to a cross cut on a stone;

7. S. 72° 32′ E. true 4,355 feet along Alae 1 and 2 to a stone marked thus ——> a little north of a cave and stone pen;

8. Thence along Alae 1 and 2 following up the bottom of the Kaakaulua gulch to an iron pin on edge of same, the travers up being as follows:

1. S. 73° 39′ E. true 4,989 feet to an old grave on edge of gulch;

2. S. 61° 14′ E. true 4,647 feet to point on edge of gulch above water hole called Kapalaia;

3. S. 55° 21′ E. true 5,063 feet to iron pin; thence,

9. S. 39° 6′ E. true 3,169 feet up gulch along Alae 1 and 2 to point on South edge of same;

10. S. 47° 57′ E. true 7,153 feet along Alae 1 and 2 to a pile of stones at upper corner of same on side of mountain; thence,

11. S. 50° 9′ E. true 5,718 feet along Waialoa to a pile of stones on top of mountain; thence,

12. S. 53° 55′ W. true 3,395 feet along Papanui to a cross cut on the rock over a sort of cave at a place called Kalepaemoa; thence,

13. N. 50° 46′ W. true 9,571 feet along Waiohuli to an iron pin on ridge; thence,

14. N. 51° 20′ W. true 9,709 feet along Koheo to an iron pipe on edge of gulch at a place called Keanawai;

15. Thence along Koheo following down the bottom of the gulch to a stone marked thus ——> on S. W. edge of same—traverse down the gulch being as follows:

1. N. 63° 7′ W. true 5,292 feet to a cross on a stone on edge of gulch;

2. N. 59° 31′ W. true 7,952 feet to a cross on a stone at edge of gulch;

3. S. 70° 10′ W. true 1,200 feet to a point on edge of gulch;

4. N. 64° 40′ W. true 1,883 feet to a stone marked thus ——>; thence,

16. N. 71° 29′ W. true 6,899 feet along Kohao to a pile of stones;

17. N. 82° 5′ W. true 19,825 feet along Koheo to a stone marked thus ——> at a place called Kaulaula; thence,

18. N. 84° 1′ W. true 2,874 feet along Waiohuli;

19. S. 35° 35′ W. true 548 feet along Waiohuli;

20. N. 85° 3′ W. true 340 feet along Waiohuli along the Kaupa of an old fish pond at Kalepolepo to sea;

21. N. 4° 55′ W. true 2,325 feet following along sea shore to initial point.

Area 5,715 acres.

6 "SCHEDULE E."

Premises at Kaonoulu, Island of Maui.

Commencing at the crossing of the footpath at the first big gulch South of B. H. Sniffen's house, and running to the center of the gulch about six chains to where the gulch forks; thence following the center of the Northern branch about one mile to where the gulch forks again; thence following the center of the Southern branch up through forest, and continuing on the top of the mountain.

Commencing again at water hole at the crossing of above said footpath and the first big gulch, North of Torbett's wooden house, on Koheo, and following the center of the Northern branch up through the forest, coming out on the left-hand, Northern side of clump of Koa trees situate on Koheo immediately above the forest, and following the center of said gulch to the top of the mountain.

Commencing again at the first mentioned points on either side and running makai in the center of above said gulches until the- (sic) meet together about two miles below.

These boundaries are well defined and not to be mistaken, but very difficult to chain;

Containing an area of Six Hundred acres, more or less.

Endorsed: In the Circuit Court, Second Judicial Circuit, Territory of Hawaii. Henry C. Hapai, et al. pl'ffs vs. May K. Brown, et al. def'ts. Amended complaint. Jun- 4, 1912, filed at the request by Mail. Edmund H. Hart, Clerk. Lorrin Andrews, Attorney at Law, Honolulu, T. H.

We hereby consent to the filing of this Amended Complaint.
(S.)
THOMPSON, WILDER, WATSON & LYMER,
Att'ys of Def'ts.

7 In the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

HENRY C. HAPAI, GEORGE W. A. HAPAI, and NELSON SNIFFEN,
Plaintiffs,
vs.
MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, a Corporation, Defendants.

Answer of Defendants.

Now come the defendants in the above entitled action by Thompson, Wilder, Watson & Lymer, their attorneys, and for answer to

plaintiffs' amended Bill of Complaint herein, deny each and every allegation thereof.

Dated, Honolulu, June 13, 1912.

MAY K. BROWN,
ARTHUR M. BROWN,
Her Husband;
BLANCHE WALKER,
JOHN WALKER,
Her Husband;
WALTER F. DILLINGHAM,
ROBERT W. ATKINSON AND
HENRY WATERHOUSE TRUST
COMPANY, A CORPORATION,
Defendants,

By Their Attorneys, THOMPSON, WILDER, WATSON & LYMER.

(S.) A. A. W.

Endorsed: L. 7566. Hapai v. Brown. Jun- 15, 1912, filed at the request of, by Mail. (S.) Edmund H. Hart, Clerk. (Stamp) Judiciary Dept. Jul- 20, 1912, Territory of Hawaii.

8 In the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

HENRY C. HAPAI, GEORGE W. A. HAPAI, and NELSON SNIFFEN, Plaintiffs,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants.

Action to Quiet Title.

Order Transferring Cause to the First Circuit.

Upon reading and filing the affidavit of Lorrin Andrews, Esqr., one of the attorneys of the plaintiffs herein, and it appearing therefrom that it is consented by the attorneys of record herein that said cause might be transferred to the Circuit Court of the First Judicial Circuit, Territory of Hawaii. And it further appearing to me that there is good cause for such transfer, and that no injustice will be done by such transfer.

It is ordered this cause be, and the same hereby is transferred to the First Judicial Circuit, Territory of Hawaii, and the Clerk of this Court is hereby directed to send all the papers and pleadings now on file in this Court in this cause to said First Circuit.

Dated Wailuku, Maui, T. H., June 30, 1912.

(S.) S. B. KINGSBURY,
Judge Circuit Court, Second Judicial Circuit, Territory of Hawaii.

Endorsed: No. —. Div. —. Circuit Court Second Circuit, Territory of Hawaii. Henry C. Hapai, et al. plaintiffs, vs. May K. Brown, et al. defendants. Order Transferring Cause to First Judicial Circuit. Filed at — o'clock — M. Jul- 1, 1912. *191–.* (S.) Edmund H. Hart, Clerk. Lorrin Andrews, Honolulu, Attorney for —— ——.

9 In the Circuit Court of the First Judicial Circuit, Territory of Hawaii, January, 1912, Term.

No. —.

HENRY C. HAPAI et al., Plaintiffs,
vs.
MAY K. BROWN et al., Defendants.

Action to Quiet Title; Jury Waived.

Stipulation.

It is hereby expressly stipulated, agreed, and admitted between the parties to the above entitled action the plaintiffs claim title to the land described in the complaint herein through and under the children of Keaka, the sister of Hewahewa, the original awardee of the land in question, other than the daughter of said Keaka, namely, Paakuku, and that defendants claim title to said land through and under said Paakuku.

Dated November 25, 1912.

(S.) LORRIN ANDREWS.
Attorneys for Plaintiffs.
Henry C. Hapai & G. W. A. Hapai.
THOMPSON, WILDER, WATSON & LYMER, *Attorneys for Defendants.*

Endorsed: L. 7566. Henry C. Hapai, et al. v. May K. Brown, et al. Stipulation. Filed Dec'r 3rd, 1912. 9:25 A. M. (S.) Job Batchelor, Clerk.

10 In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

HENRY C. HAPAI
vs.
MAY K. BROWN et al.

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11 In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

HENRY C. HAPAI
vs.
MAY K. BROWN et al.

Transcript.

May 20, 1913.

Mr. Quarles: We offer certified copy of royal patent.

The Court: Had you not better begin at the same order? We will get our exhibits tangled up again.

Mr. Quarles: Very well.

The Court: We will have to have the interpreter, Mr. Hopkins. Mr. Thompson is here; I have no objection to putting him on and introducing Exhibit "B," and we will mark it Exhibit "B."

Mr. Quarles: Call Mr. Thompson.

Direct examination of J. A. Thompson, called and sworn:

The Court: Page 166, I think it is, Mr. Thompson.

The Witness: This volume is on page- 148 and 364, pages 148 and 364.

The Court: That does not agree with our record here.

Mr. Quarles: This is certified copy of Land Commission
12 Award and Supreme Court record book, pages 166, 167.

The Witness: Volume 12, on pages 148 and 364, the probate records.

The Court: It is not the probate record we are after; it has something to do with the Land Commission.

The Witness: If it is an exhibit on the former trial in this court they have all been returned to the Clerk of the Circuit Court of the First Circuit.

Direct examination of J. H. Tucker, called and sworn:

Mr. Quarles:

Q. What is your name?

A. Joshua D. Tucker.

Q. What position, if any, do you hold?

A. Commissioner of Public Lands of the Territory of Hawaii.

Q. What record books have you in your hand?

A. That is a copy of the original book, No. 10, original awards, L. C. A. awards.

Q. Where is the original of Book No. 10?

A. In the office. Do you want the original?

Q. Do you know this to be correct, a correct copy?

A. Yes, this is correct. The original award was by name, not by metes and bounds.

The Court:

Q. That is the one we had before?
A. Yes, sir.
Q. Not by metes and bounds?
A. No, sir.
Q. What we want is the same book we had before.
A. This is the same book.

Mr. Quarles:

Q. Will you turn to pages 406 and 407 and state what is contained on those pages?
A. 406 is the Mahele 3278, H. Hewahewa, Part 2, the Ahupuaa of Kaonoulu in Kula, Maui.

Mr. Quarles: If the court please, we would like to read that into the record.

The Court:

Q. It is in Hawaiian?
A. It is in Hawaiian.

Mr. Quarles:

Q. Can you read it and interpret it, Mr.——
A. No, sir.

Mr. Quarles: If the court please, we would like to interpret—the Hawaiian Interpreter. Mr. Beckley, will you please read and interpret into English page- 406 and 407?

The Interpreter (reading): "No. 3237, H. Hewahewa, Part 2. He has made application for his ahupuaa of Kaonoulu at Kula, on the Island of Maui, because he obtained this land from the King, Kamehameha Third, in the land division of the year A. D. 1848, and he has since occupied—has since had possession of this land without any obstruction from that time, and for that reason we are confirming the same to H. Hewahewa, that he has title to the same, less than allodial. When he pays the Government commutation, then he is entitled to a royal patent. The kuleana of the natives in the said land is not included. He is also to pay for the
14 decision and the decree as follows'—Oh—"He is to pay for the hearing and the decree as follows: For the use of the room and printing of the same in the newspaper, copy of the record and costs for the subpœna, one day's session, copying the testimony of witnesses"—"for the decision" crossed out—"For surveying by day, for copying, for the decree given on the 7th of March, 1854. W. L. Lee, G. M. Robertson, I. Kekaulahao, J. H. Smith. Total five dollars. We have given this award in accordance with the law passed on the 19th of June, A. D. 1852, with reference to Konohikis." Then there is a memorandum in red ink, "See volume 10, page 407, original award."

Mr. Quarles: Now, if the court please, we ask that be marked Exhibit "A" and we will furnish a certified copy of that in English and in Hawaiian as soon as we can get it from Mr. Tucker.

The Court: Will you kindly give the order for it now?

Mr. Quarles: Yes; Mr. Tucker, will you kindly copy that as soon as possible?

The Witness: In English? Want it translated?

Mr. Quarles: Certified copy of it for use in this case.

The Witness: You want it translated?

Mr. Quarles: With the translation.

The Court: The stenographer can furnish the translation if you will furnish a certified copy of the record as you have it.

The Witness: Of the record, yes.

Mr. Quarles: We would like to have that as soon as you can make it, Mr. Tucker. Now, if the court please, we offer——

The Court: The next is the Mahele, Mr. Quarles, page 166.

15 Mr. Quarles:

Q. What record have you, Mr. Tucker?

A. Copy of Mahele award.

Q. What book are you reading from?

A. A certified copy of the Mahele award of 1848.

Q. Will you kindly read it?

A. Page here is to H. Hewahewa. You can read it. (To the interpreter.

The Interpreter (Mr. Beckley): "To H. Hewahewa." Under the heading of "Lands" find the same of "Kaluapulu," and under the heading of ahupuaa is described as "Ili no Kalihi," and under the heading of "District" the word "Kona," and under the heading of "Island," "Oahu." Also under the description—under the heading of "The Lands," "Kaonoulu," and under the—following that, under the heading of "Ahupuaa," the same is described as an ahupuaa, and under the heading of "District" the same is situated at Kula, and under the heading of "Island," "Maui." "I hereby agree that this Mahele is satisfactory. The lands described above belong to Habakuka Hewahewa and he is hereby authorized to take the same before the Land Commissioners. Kamehameha. Seal. Royal Palace, February 14th, 1848."

Mr. Quarles: If the court please, we ask that it may be marked Exhibit "B" and ask Mr. Tucker to make a certified copy as soon as possible, which we will file, if your Honor please.

The Court: We had the whole record in before. I don't know whether you care to offer a partial record or not. That is not the whole of the record, apparently, produced here. You offer a partial record?

Mr. Quarles: We want the whole record as we had it before.

16 The Court: Well, there are a lot of other lands on Hawaii; some lands at Koolaupoko, Oahu.

Mr. Quarles:

Q. Have you the record here showing that, Mr. Tucker?

The Court: Is that a part of the record?

A. This is Kalihi and Maui.

The Court: I am just simply going by the record we had last time. It is immaterial to have those others in.

Mr. Wilder: I don't think it is material to have those others in.

The Court: Very well, certified copy of this Mahele may be received, so far as it has been translated by the interpreter; may be received as Exhibit "B."

Mr. Quarles: Well, I would like to make a full record if this relates to the same land.

The Court; No, it does not, apparently; it goes off onto the other islands, Hilo, Kohala——

Mr. Quarles:

Q. This one is in relation to land on what island?
A. Land at Kalihi and land at Kula, Maui.
Q. Kula, Maui?
A. Yes, sir, Kaonoulu.

Mr. Quarles: Kula, Maui, is this land.

The Court: I understand. I say, before we had the whole——

Mr. Quarles: Then, if your Honor please, we offer this record and ask that it be interpreted into the record, translated into the record.

The Court: It has already been done.

Mr. Quarles: Very well.

The Court: Mahele award, certified copy of Mahele award by the supreme court?

17 The Witness: Yes, sir.

The Court: Only one book?

The Witness: That's all.

Mr. Quarles:

Q. Now, Mr. Tucker, have you the record of Royal Patent No. 7447?
A. I have a copy of it.

Mr. Quarles: We offer the certified copy of Royal Patent 7447.

The Court: What was the exhibit before?

Mr. Quarles: It was marked Exhibit "D."

The Court: Well, where is Exhibit "C"?

Mr. Quarles: If the court please, we first offer certificate of boundaries, No. 56, and marked Exhibit "C."

The Court: It may be admitted as Exhibit "C" in the proceedings.

Mr. Quarles: I think that's all, Mr. Tucker. Thank you.

The Court: Anything further?

Mr. Quarles: No, I think that's all, if the court please. We now offer in evidence the Royal Patent No. 7447, duly certified, and ask that it be marked an exhibit, as Exhibit "D."

Mr. Wilder: I make the same objection that I did before, your Honor, on the ground that it appears that—the date of 1860 and signed by Kalakaua; consequently I object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Before I made some ruling on it.

Mr. Wilder: You overruled the objection before.

The Court: On the ground that the examination of the original record showed——

Mr. Quarles: I think for that reason we had better intro-
18 duce the original record.

The Court: Better call Mr. Tucker before he gets away.

(Mr. Tucker recalled.)

Q. That book that we had before, Mr. Tucker.

Mr. Quarles:

Q. The original record, Royal Patent 7447.

A. We have a copy.

The Court: No, but the point came up as to the date and the same objection is made now that was before.

A. That is the one where it was changed, isn't it?

Q. Yes, a question of 1860 or 1880.

A. Yes. Well, here is the original certificate of boundaries, which is given on the 11th day of February, 1880.

Mr. Quarles: We have a certified copy of that.

The Court: Mr. Wilder objects to the introduction of this record on account of its date; that the court takes judicial knowledge——

The Witness: No, sir, it is marked here 1860. There has been an erasure at some time there.

The Court: Let me see it.

(Book shown to the court.)

The exhibit may be admitted, as it appears to the court that the date 1860 is an error and an apparent error is shown by the record book, No. 25. Copies of patent next preceding the one introduced bearing the date of 1880 and the patents next succeeding the patent bearing the date 1880. The Court, however, does not recognize the signature of the — attached to the patent as being the genuine signature of a sovereign at that date.

Mr. Wilder: We save an exception to your Honor's ruling.

The Court: Exception allowed.

19 The Witness: Book 25, record of patents on awards.

Mr. Quarles: Just one more question——

The Witness: This is a record of the—the issuance of a Royal Patent on the Land Commission Award.

Mr. Quarles:

Q. Well then, does—What do you mean by that? Do you mean that Royal Patents as issued by the King were recorded in that book?

A. Yes.

Q. This is the record book?

A. Yes.

Q. That record book was kept in the ordinary course of business?

A. Yes.

Mr. Quarles: And does the record show, your Honor, what you just announced, that the entries immediately preceding and those

immediately following were in the year 1880, as shown by this record here?

The Court: Yes. I also announced from my knowledge of the signature of the sovereigns that those are not the genuine signatures.

Mr. Quarles: Well, this is only the record, your Honor; it is not the original.

The Court: I don't know that Mr. Wilder makes any objection on that ground?

Mr. Wilder: Well, there are some signed, some not signed; some are copies. I don't care about that.

The Court: Very well; it may be admitted, then. The other objection is overruled.

Mr. Quarles: Very well. Exhibit "D."

That's all, Mr. Tucker. If the court please we offer cer-
20 tified copy of the will of Keaka, with an English translation thereof, and ask that it be received and marked Exhibit "E."

Mr. Wilder: As far as the translation is concerned, I don't know. That was the translation used before that your Honor didn't agree with, and the supreme court upheld your Honor's translation, as I understand it, and then they made a change in the last clause.

The Court: Yes.

Mr. Wilder: Well, I presume that Judge Quarles can offer the will and his translation and the court can either adopt it or not later on.

Mr. Quarles: Well, if your Honor please, to this we attach also the translation made by the supreme court, of which your Honor has to take judicial notice.

The Court: I think it ought to be filed with, made a part of this exhibit.

Mr. Quarles: Very well, then, your Honor. We will attach a copy to the exhibit, if your Honor please, during the day. I call Mr. Hapai.

Direct examination of Henry C. Hapai, called and sworn.

Mr. Quarles:

Q. What is your name?

A. Henry C. Hapai.

Q. Age?

21 A. 40.

Q. Are you one of the plaintiffs in this action?

A. I am.

Q. What relation, if any, were you to Keaka?

A. She is my great grandmother.

Q. Now will you give, if you can, the family tree, commencing with Keaka and descending.

A. Shall I begin from the original awardee?

Q. Beginning from——

A. Hewahewa.

Q. The original patent grantee?

A. Original awardee.

Mr. Wilder: Pardon me, what is this you are reading from?

A. Family tree.

Mr. Wilder: No, but what is it? I should like to look at that before you read it off. Oh, this is something you prepared yourself?

A. Ready to prove it, too.

Q. I know, but this is something you prepared yourself?

A. Well, I just put it down, because, remember, if I don't put that name down there I will furnish you one. Shall I proceed?

Q. Yes. I wanted to know what it was. I want to know if you can't testify to this without reading it, that's all?

A. (After folding up and laying aside paper.) Original awardee, H. Hewahewa; married to Nawelu. No children. Keaka, sister, married Nahinalau; nine children.—Kaiwilei, male; Kahoiwai, male; Kalawaiaakanoa, male; Paakuku, female; Palaualelo, male; Paakuku, female; Kahoohuli, female; Kamakanoenoe, female; Apia Lilinoe, female,—nine children. Do you want to know who they — married to or just their children?

22 Q. Yes, their marriage, whether living or dead, and if dead, the children of those who are dead.

A. Kaiwilei, married Kealopelapela, both dead; had three children,—Keohokii, Moeikauhane, and Kaiwilei, Jr.,—all dead; no heirs, Kahoiwai married Heleloa, had six children,—Kaehuokakai, Mokuohai—Kaehuokakai, male—shall I mention that, male or female?

The Court: I think you may as well.

A. Kaehuokakai, male; Mokuohai, female; Pahukula, male; Kenoiaina, female; Meliana, female; Kamala, female,—two living, four dead. Two living are Pahukula and Kenoiaina. The deceased have no heirs. Kalawaiaakanoa married Helekunihi, both dead, no heirs.

The Court: I would like to know the date—or the ages of these people that died. We have a statute which provides that a minor child who dies, where her property accrued from her ancestor, it goes to his brothers and sisters and not to his collateral heirs. That may become important; I don't know if it is. If it is coming in here the ages of these children who deceased ought to be known.

Mr. Wilder: Well, I don't know what all this has got to do with it. I don't understand they come in; I was waiting to hear. I hadn't objected to it. I don't see what the point is, all these—naming all these children now.

Mr. Quarles: It is the only way you can get at the—prove who the living heirs are, is to trace the family tree down; I don't see any other way of doing it.

The Witness: Paakuku, female, died a minor——

Mr. Wilder: What's that?

A. Paakuku, the first Paakuku. Palaualelo married Kahinalau,—one child, Ana, living; Ana Kamakapaia is her name but

23 her name is Ana, Paakuku, second Paakuku, married Kainana—both dead. Daughter Keano; she is dead; she has children living. Kahoohuli, female, married Holoia,—two children,

Keano and Kaaikaua, Kaaikaua dead, Keano living; Kamakanoenoe married B. H. Sniffen,—both dead,—children twelve; Elijah, dead; John, living; Harriet, living; Mary, living; Esther, dead; Elijah, living; Noah, living; Samuel, living; Mahina, living; Lily, living; Dorcas, living; Nelson, living. Apia Lilinoe, dead, married George E. Miner, living. No children.

Mr. Quarles:

Q. Mr. Hapai, I will ask what this paper is that I hand you?
A. That is the family tree of Keaka and Hewahewa,—H. Hewahewa and Keaka.
Q. Is that a correct——
A. It is a correct——
Q. —family tree?

Mr. Quarles: If the court please we offer it as Exhibit "F."
Mr. Wilder: I object to it. The witness has testified to all the stuff; I don't see what you are putting in this for; it is already in the record.
The Court: I think it would be of assistance to the court in determining the issues, probably. It may be admitted for that purpose.
Mr. Quarles: Exhibit "F."

Q. Mr. Hapai, will you state as near as you can the ones that you named who died in infancy who left a father or mother surviving?
A. None of them.
24 Q. Left no father or mother surviving them?
A. They all died of—past the minor age.
Mr. Wilder: What's that?
A. They are not minors when—All these that are dead, they are past the—they are all of age.

Mr. Quarles:

Q. Arrived at the age of maturity?
A. Yes, maturity, yes.
Q. Well, I understood you to speak of one as having died in infancy?
A. Oh, that is Elijah; he has died; that is the first Elijah, and Paakuku, the first Paakuku, they are—I thought the children of the —great grand-children—the grand-children.
Q. At the time of Keaka's death which one- of the children that had been born to her were living,—which ones?
A. There was Apia Lilinoe—Oh, Kaiwilei, Palaualelo, Kahoiwai and Apia Lilinoe, as far as I am able to think; I have forgotten about whether Kahoohuli was alive or not; I think Kahoohuli was alive too.
Q. Was she married?
A. Holoia? Kahoohuli.
Q. And when did he die, her husband, do you know?
A. I don't remember.
Q. Did they leave children surviving them?

A. Two, Pahukula and Keano.

Q. Now, the children of Keaka who survived her, who were living at the time of her death, how many of them are now living?

A. None.

Q. And how many children of those who have died are now living? Take them one by one and name them.

25 A. Kaiwilei has got no children living. Kahoiwai got two, Kenoiaina and Pahukula. Kalawaiaakanoa, he had no children—I said that. Paakuku, she died early. Palaualelo——

Q. The first——

A. The first Paakuku died early. Palaualelo has one child living; she is at Kohala.

Q. What is her name?

A. Ana, Ana Kamakapaia. Then the Paakuku, the second, the child, Keano, is dead,—and I have got it all down there. Kahoohuli had two children, one dead, one alive. Kamakanoenoenoe had twelve, two dead, and Apia Lilinoe has none; her husband is living, —George E. Miner.

Q. Now which one of these—of the children of Keaka was your mother?

A. Kamakanoenoe.

Q. How many children has she living?

A. Who?

Q. Oh, she is still living.

A. She is still living.

Q. Now the one that you mention as Paakuku the second; who do you mean by Paakuku second?

A. The Paakuku who is referred to in that will of Keaka.

Q. The Paakuku first is an elder sister?

A. Elder sister of hers, yes.

Q. And died in infancy?

A. Yes.

Q. And died—Was she living at the time of Keaka's death or had she died prior to Keaka's death?

A. I don't know; I think it is prior to Keaka's death.

26 Cross-examination of Henry C. Hapai.

Mr. Wilder:

Q. Where do you get all this information from, Mr. Hapai?

A. From my mother, from George E. Miner, and from the other heirs.

Q. From your mother?

A. Yes sir.

Q. And from George E. Miner?

A. Yes sir.

Q. And who else?

A. The other children.

Q. What others?

A. My mother's brothers and sisters, and Ana of Kohala, court records in the probate records have some of these names down.

Q. What court records?

A. The probate records of Keaka, and Paakuku's will. Paakuku's probate record had some of these names confirmed.

Mr. Wilder: That's all.

Mr. Quarles: That's all, Mr. Hapai—I will recall Mr. Hapai.

The Court: I would like to understand your objection fully, Judge Wilder. You object, as I understand, to the admission of this blue print introduction of the family tree, or you object to the testimony itself?

Mr. Wilder: Well, that was the idea. I understood this replaced the testimony.

The Court: Well, it is not directed in my mind for that
27 purpose; simply as an aid to the court in determining what the witness has testified to. I do not admit it as being his testimony. What I am particular about is to know what your objection goes to,—whether it goes to the testimony itself or whether it goes to the blue print.

Mr. Wilder: My objection goes to the blue print as well as to the testimony; that is, as to what is on the blue print.

(Argument.)

To get it straightened out I move that all the testimony of Mr. Hapai in regard to this pedigree be stricken out; that will take the blue print with it. I take it the motion is granted?

The Court: Yes.

Mr. Wilder: On the ground it is not the best evidence, consequently it is incompetent, irrelevant and immaterial.

Mr. Quarles: It is a well-established rule of evidence that genealogy, births and deaths may be proved by hearsay. Before the court rules on that I would like to examine Mr. Hapai.

The Court: Well, the difficulty is that Mr. Hapai has testified that much of his information came from court records, came from the testimony of his mother, who is still living——

The Witness: Verified by the court records.

The Court: —and testimony of the other members of the family who are still living. He, as I understand, professes no knowledge of it himself, of the—ever meeting these people and having them in his family. He is testifying to statements of others who are still living, that is the point.

Mr. Quarles: I didn't so understand that he had.

The Court: That is what he said. I understood he has
28 verified his statements in his testimony from court records.

Mr. Wilder: From court records, I understood, also that he said from George Miner, who is still living, from his mother, who is still living, and the information is all from persons who are still living.

(Argument.)

Mr. Quarles: Well, before the court rules on that we would like to examine him a little further.

The Court: All right.

Mr. Quarles:

Q. Mr. Hapai, do you know of any family record, entries in a bible or other book kept, showing the family tree commencing with Hewahewa on down; is there such?

A. No, sir.

Q. Now the information and testimony which you have now given in regard to this family tree is derived solely from people living?

A. Yes, sir.

Mr. Quarles: If the court please, we would like to view some authorities before the court rules on this question. We want to call Mrs. Hapai—We will call Mrs. Hapai unless you have something else to ask him.

Mr. Wilder: Well, what has happened to this objection?

Mr. Quarles: I am asking the court to take it under advisement for the present.

Mr. Wilder: It seems to me it ought to be disposed of. We contend it is absolutely hearsay.

Mr. Andrews: We would like your Honor to take it under advisement. We will look up the authorities.

(Argument.)

The Witness: You will find in the probate of the will of Keaka the children of Keaka living at her death.

29 The Court: Well, let's see now. We have that record right here.

The Witness: I think it was in that, if I am not mistaken.

The Court:

Q. Well, didn't you hear it from other sources besides that?

A. O yes.

Mr. Andrews:

Q. You know who the children are?

A. O yes.

Q. Without looking in the court record?

A. O yes, I only put the court records in in verification of some of the names that I named. I got a casual glance at some of those court records and I saw it some place and I got it in my mind that it was in the will of Keaka somewhere; some of those children living, it was somewhere——

The Court:

Q. Whose names are mentioned in the testimony?

A. Yes, I think that is what I have reference to. I saw it somewhere.

Q. No decree here discharging the administrator.

A. That is Paakuku.

Q. Yes.

A. Well, that is one of the names that I had verified on the court

record. That is why I referred to the court record. That verified some of those heirs,—Paakuku, for instance.

The Court: Well, it seems to me the only way to proceed to determine the exact situation is to ask this witness what portions of this testimony he derived from different sources and then we will be——

Mr. Andrews: Yes. Well, will we examine him or is Judge Wilder examining?

Mr. Wilder: Well, I understood he couldn't designate which portion came from which; it was all—information was gathered from all these sources.

The Witness: Well, I knew that my grandfather is B. H. Sniffen and my grandmother is Makanoenoe. I knew my uncles and aunts. I knew Ana of Kohala. I knew Kenoiaina and Pahukula——

Mr. Andrews: Are you examining, Judge?

Mr. Wilder: No, I didn't put any question; no, the witness volunteered that.

Mr. Andrews: Are you examining now?

Mr. Wilder: No, I made a motion to strike out.

The Court: I will allow the attorney for the plaintiff to ask the——

Mr. Andrews: If I may examine I will take it up. I don't want to interfere with Judge Wilder, that's all.

Q. Mr. Hapai, you have stated that you got this from various sources, persons who are living and—How much of it do you know of your own knowledge,—people that you knew and saw?

A. I knew my—Of my own knowledge?

Q. Yes.

A. B. H. Sniffen is my grandfather, and Makanoenoe my grandmother, and I knew my uncles and aunts.

Q. And their descendants?

A. Eh?

Q. Did you testify to your uncle and aunts' descendants?

A. Yes, descendants of each.

Q. You knew them?

A. I knew them.

Q. Of your own knowledge?

A. Yes. I know Keano, daughter of Paakuku.

Q. Yes.

A. I knew that her mother was Paakuku.

Q. Yes, and did you knew who—How did you know that Paakuku—the name of Paakuku's mother?

A. Who,—Keaka?

Q. Yes.

A. Well, I simply asked who my great grandmother was, and mother used to hum around and around the house; I said "What do you call Keaka for?" She said, "That is your great grandmother."

Q. Yes, and the same way with Keaka's children; you were told in the course of ordinary family history?

A. Well, it wasn't—I never asked it when I first discovered—I never asked but in the course of time why it gradually came to me without any asking, and of course when I had—when I drew this family tree out I verified all that I knew in the course of time, which I never asked.

Q. Yes. When you say you got it from court records do you mean you got it first hand from court records?

A. No.

Q. Or verified your information where you could from court records?

A. Why, I referred to court records and in the Keaka will, and verified that Paakuku was one of the daughters of Keaka.

Q. Had you been told that before by your family?

A. About what,—Paakuku?

32 Q. Paakuku being the daughter of Keaka?

A. I don't know who told me but I knew it.

Q. Yes.

A. Mother didn't have to tell me about Paakuku and all these other heirs because I knew already. The only—practically the only name that I had to contend with is Kalawaiaakanoa and the elder Paakuku. What I was told afterwards is mere verification of what I already knew in the course of time. I don't remember how I got it but I got it.

Q. In the different visits of the family to Hawaii?

A. Different visits of the family, yes.

Q. In the ordinary family history as it comes down from time to time?

A. As it comes down from time to time; it is merely in the course of talking, one thing another, I pick them out, then when I began to—when I wanted to find the family tree it was verified, all that I knew was verified by my mother and Keano and Kenoiaina and all the rest of the family; they simply verified what I already knew.

Mr. Andrews: It seems to me, your Honor, that that is—that comes within the rule against hearsay.

The Court: How about Hewahewa?

Mr. Andrews:

Q. How about Hewahewa; where did you hear about him first, do you know?

A. Oh, I had—I had spoken of Hewahewa, was my great grandfather; I have merely verified it, that's all; my mother simply verified.

Q. You asked your mother that?

A. She simply verified it. I knew all the time he was my great grandfather; I never asked my mother who—if Keaka was

33 my great grandmother; she simply verified, and when I said, "Say, is it correct, Keaka is my great grandmother?" she said yes. "How about Hewahewa?" "Hewahewa is your grandfather." I was never told of the family history; it was simply verification of what I already found in the course of time, by visits

here and there. I never even got it only from the family; I got it from David Crowninberg. Even Charley Hopkins knows some of the heirs here.

Q. Well, these various sources that you are mentioning now outside of the family verified the knowledge that you got in your own family?

A. That I already, family——

Q. From visiting among the members of the family from year to year?

A. And others. I never got it only from the members of the family; they simply verified what I got. When I drew up the plan I say, "Is this so and so?" They said, "Where did you get your knowledge from?" I said "In the course of time I picked up this knowledge here and there."

(Argument.)

Mr. Andrews: The ruling on the motion will be reserved until tomorrow morning at nine o'clock, at which time further authorities will be presented?

The Court: Well, that is my inclination. I think the motion is rather well taken but I don't wish to rule until you have an opportunity. Put it over until tomorrow morning at nine o'clock.

34 In the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

HENRY C. HAPAI
vs.
MAY K. BROWN et al.

May 21, 1913.

Testimony of Henry C. Hapai, Recalled.

Mr. Andrews: We are now, if the court please, examining Mr. Hapai as to what he knows personally, in view of this motion to strike, of these heirs.

Mr. Wilder: I thought we adjourned before to present authorities?

Mr. Andrews: Well, I will say to your Honor our theory now is, we think your Honor is correct as to the question of hearsay as to a person or member of the family who is alive. I want to find out from Mr. Hapai just who of these relatives he knew personally in his lifetime; who he can testify of his own knowledge were his cousins.

The Court: Wouldn't Mrs. Hapai cover the whole ground? It seems to me we are wasting time. Mr. Hapai has done valuable work as a compiler of the genealogy of his family but it seems to me Mrs. Hapai is the senior witness, so to speak, and has
35 the comprehensive view of the entire matter; why not depend on her?

Mr. Andrews: It was only that we didn't wish to withdraw Mr. Hapai, but if your Honor would prefer it that may be——

The Court: I think that will be more satisfactory.

Mr. Andrews: Well then, we ask leave at this time, then to withdraw Mr. Hapai, if your Honor feels that is the proper ruling. Unless you have any objection then we will recall him for such personal matters as are necessary. Call Mrs. Hapai. Mrs. Hapai by special request wishes to testify in Hawaiian.

Mr. Wilder: Before she is sworn, I take it that the evidence that Mr. Hapai gave on these matters is practically out; that is, the motion is practically granted now?

The Court: That is at least the moral effect of the situation, but I understand they have withdrawn Mr. Hapai from the stand without completing his testimony.

Mr. Andrews: We will prove it by Mrs. Hapai. We want to afterwards have the right to confirm certain portions of Mr. Hapai's testimony but we will consent that other portions go out.

The Court: I think that this motion ought to be granted in its entirety, and then you can take up de novo the examination of Mr. Hapai.

Mr. Andrews: All right. I must take an exception. We except to the ruling of the Judge.

36 Direct examination of Mrs. Harriet Hapai, called and sworn:

(Mr. Hopkins acting as interpreter.)

Mr. Andrews:

Q. Your name is—your full name please?
A. Mrs. Hapai.
Q. Yes. What is your first name, christian name?
A. Harriet Hapai.
Q. Now, Mrs. Hapai, the judge says if you wish you can speak in Hawaiian, or you can speak in English, as you please.
A. Yes sir.
Q. Did you know a woman named Keaka?
A. Yes.
Q. What relation to you was she, Mrs. Hapai?
A. She is my grandmother.
Q. And she is now living or dead?
A. She is dead.
Q. Do you know the name of—whether Keaka had a brother?
A. Yes.
Q. How did you know that?
A. My grandmother told me.
Q. Yes. What was his name?
A. Hewahewa.
Q. And did he die before Keaka died?
A. Yes.
Q. Was Hewahewa married, do you know?
A. Yes.
Q. How did you know that?
37 A. My grandmother told me.
Q. And what was the name of his wife?
A. Nawelu.

Q. And she died—Did she die before or after Hewahewa?
A. She died before Hewahewa.
Q. Were there any children of that——
A. No.
Q. Did Hewahewa have any other sisters or brothers than the—than Keaka?
A. No.
Q. And was Keaka married?
A. Yes.
Q. And what was the name of her husband?
A. Nahinalau.
Q. And did he die before Keaka or after?
A. He died before Keaka.
Q. Did you know Nahinalau?
A. I didn't see; my grandmother told me.
Q. No, you were told that by Keaka?
A. Yes.
Q. Now the children of Keaka, do you know who they were?
A. Yes.
Q. Will you give us their names as you remember?
A. Kaiwilei.
Q. Kaiwilei, and who was the next one?
A. Kahoiwai.
Q. Those were both boys?
A. Yes. Kalawaiaakanoa.
Q. He was a boy?
A. Yes.
Q. Next one?
38 A. Paakuku.
Q. Paakuku. That was a girl?
A. Yes.
Q. Then the next one?
A. Palaualelo.
Q. That was a boy?
A. Yes.
Q. And then who came?
A. Kahoohuli.
Q. That was a girl?
A. Yes. Then comes my mother, Kamakanoenoe.
Q. Kamakanoenoe was your mother?
A. Yes.
Q. And then?
A. Apia Lilinoe.
Q. Apia Lilinoe?
A. Yes.
Q. That was a girl, too?
A. Yes.
Q. Now then was there more than one Paakuku?
A. There is another Paakuku; there's two Paakukus.
Q. Yes, and they were both girls?
A. Yes.

Q. Now Kaiwilei, did you know him?
A. No.
Q. He had died before you——
A. Yes.
Q. He died before Keaka?
A. O yes.
Q. Was he married?
A. Yes.
39 Q. What was his wife's name?
A. Kealopelapela.
Q. And did you know his wife?
A. Yes.
Q. You knew her in her lifetime?
A. Yes, I knew her.
Q. And did they leave any children?
A. Yes.
Q. Who were their children?
A. Keohokii.
Q. Is he alive or dead?
A. He is dead.
Q. And did he leave any heirs?
A. No.
Q. Who was the next one?
A. Moeikauhane.
Q. And is he dead?
A. Yes.
Q. And what is the next one?
A. Kaiwilei.
Q. And is he dead, too?
A. Yes.
Q. And he left no children?
A. No.
Q. And the wife of Kaiwilei, Kealopelapela, is she dead?
A. She is dead.
Q. Now then, the next boy was named Kahoiwai?
A. Kahoiwai.
Q. Was he married? Did you know him in his lifetime?
A. Yes, I knew him.
Q. And was he married?
40 A. Yes.
Q. Who did he marry?
A. Heleloa.
Q. And is she dead?
A. Yes.
Q. And Kahoiwai is dead now?
A. Yes.
Q. Did they have any children?
A. Yes.
Q. Do you remember their names?

Mr. Wilder: I object to this. It appears that at the death of

Keaka this Kahoiwai was alive, consequently it would be immaterial, as I understand it, whether he left any children or not.

The Court: Keaka predeceased him?

Mr. Wilder: Yes.

Mr. Andrews: As I remember the will of Keaka, she left it to all her children.

Mr. Quarles: All her brothers and sisters.

Mr. Andrews: To the brothers and sisters of Paakuku,—all her children.

The Court: That was Paakuku II, number two.

Mr. Andrews: No, Keaka.

The Court: That is to say, she left to—Paakuku mentioned in her will was Paakuku number two.

Mr. Andrews: Yes, one Paakuku died as a minor, as we will show in a very few minutes, but I don't see the point of Judge Wilder's objection now.

(Argument.)

Q. Now did—In order to get it straight, did Kahoiwai—did he die before Keaka or after Keaka?

41 A. I think he—I can't remember. I think he died before Keaka.

Q. Think he died before?

A. He did, I think.

Q. And his wife is now dead,—Heleloa?

A. O yes, his wife died first.

Q. And they left—They had some children?

A. Yes, six.

Q. Now give us the names of the six children, as you can remember them.

A. Kenoiaina——

Mr. Wilder: Just a minute. If Kahoiwai died before Keaka it is immaterial what children he left.

The Witness: I can't remember whether Kahoiwai died before Keaka.

(Argument.)

The Court: Well, I will overrule the objection for the purpose of getting the testimony in, and getting the full view of the situation.

Mr. Wilder: I will save a formal exception.

Mr. Andrews:

Q. To the best of your knowledge, Mrs. Hapai, do you know whether Kahoiwai died before or after Keaka?

A. I can't prove that.

Q. You can't——

A. I can't prove that.

Q. You knew Kahoiwai in his lifetime?

A. O yes, I knew Kahoiwai.

The Court: Do you know how that fact could be ascertained?

Mr. Andrews:

Q. Do you know where you could find out whether Kahoi-
42 wai died before or after?
A. I don't know.
Q. Do you think Mr. Miner would know?
A. Perhaps so.
Q. Now his wife, Heleloa, you say she is dead?
A. Yes.
Q. Now will you please give us the names of the children?
A. Mokuohai.
Q. What is the first, please?
A. Mokouhai, M-o-k-u-o-h-a-i.
Q. That is a boy?
A. That is a boy.
Q. Yes. Is he living or dead?
A. I think he is dead now.
Q. Yes. Do you know whether or not he had any heirs, any children?
A. No.
Q. No. Now the next one?
A. Kenoiaina.
Q. Now let me see—Oh, Kenoiaina?
A. Yes.
Q. That was a boy or girl?
A. Girl.
Q. Girl, and is she living or dead?
A. She is living.
Q. She is living?
A. Yes.
Q. Now you spoke of Mokuohai; did you mean that he is——
A. He is dead.
Q. He had no heirs?
A. I don't think so.
43 Q. As far as you know he had no heirs, left no heirs at all?
A. No.
Q. Now the next child was who?
A. Pahukula.
Q. Pahukula?
A. Yes.
Q. That was a boy or girl?
A. Boy.
Q. A boy. Is he living or dead?
A. Yes, he is living.
Q. Now the next one?
A. Kaehuokakai.
Q. He is a boy or a girl?
A. A boy.
Q. Yes, and is he living or dead?
A. He is dead.
Q. He is dead?
A. He is dead.

Q. Did he have any heirs?
A. No.
Q. Then the next one, please.
A. Meliama.
Q. That was a girl?
A. A girl.
Q. Yes, and is she living or dead?
A. She is dead.
Q. Did she leave any child?
A. No.
Q. The next one, please?
A. Kamala.
Q. Yes, Kamala. That was a girl?
A. A girl.
44 A. Kamala, and is she living or dead?
A. She is dead.
Q. Did she leave any heirs?
A. No.
Q. No. Now you said the next child of Keaka was Kalawaiaakanoa?
A. Yes, Kalawaiaakanoa.
Q. That was a boy?
A. Yes, a boy.
Q. Did he marry?
A. Yes.
Q. Who did he marry?
A. Helekunihi.
Q. And his wife—Did they have any children?
A. No.
Q. No children, and is both he and his wife dead?
A. Yes.
Q. The next child you say was a Paakuku?
A. Paakuku.
Q. Number one?
A. Number one Paakuku.
Q. She is dead?
A. Yes, she died as a young——
Q. Died as a young child?
A. Yes.
Q. Did you know her yourself?
A. No.
Q. How did you know that she was——
A. My grandmother told me.
Q. Keaka?
A. Yes.
45 Q. Then the next child was Palaualelo?
A. Palaualelo.
Q. Yes. He was a boy?
A. Yes.
Q. Did he marry?
A. Yes.
Q. What was the name of his wife?

A. Hinalau.
Q. Is he dead?
A. Yes.
Q. And his wife dead?
A. Yes.
Q. Did they leave a child?
A. Yes.
Q. What is the name of the child?
A. Ana.
Q. And she is alive or dead?
A. Yes, she is alive.
Q. She is alive. Then came Paakuku number two?
A. Yes.
Q. You knew her?
A. Yes.
Q. In her lifetime, yes. She is dead now?
A. Yes.
Q. And did she marry?
A. Yes.
Q. Who did she marry?
A. Kainana.
Q. Kainana. Is he dead?
A. Yes.
Q. And did they leave any children?
A. Keano Eldredge.
46 Q. That was a girl?
A. Yes.
Q. And Keano is now dead?
A. Yes.
Q. Keano was married before she died?
A. O yes.
Q. Did she leave any heirs?
A. I don't think so.
Q. No. You knew her; you knew Keano?
A. O yes.
Q. And there were no children; as far as you knew there were no children?
A. Who,—Keano?
Q. Yes.
A. O yes, she did, but all dead.
Q. All dead?
A. Yes.
Q. Did they die before their mother or after?
A. No, they died after.
Q. Kahoohuli?
A. Kahoohuli.
Q. That was a girl?
A. Yes.
Q. And did she—You knew her?
A. Yes.
Q. Yes. Did she marry?
A. Yes.

Q. Who did she marry?
A. Holoia.
Q. And is she dead?
A. Yes.
Q. And he dead?
47 A. Yes.
Q. Did they leave any children?
A. They have two.
Q. Yes; who were they?
A. Kaaikaua; he is dead.
Q. Yes.
A. And Keano Dudoit.
Q. She is alive?
A. Yes.
Q. Now Kaaikaua, the child, was a boy?
A. Yes.
Q. Did he leave any heirs?
A. No.
Q. Now before we take your mother's family, Mrs. Hapai, I will go back a moment; Kaiwilei, the eldest child, he died before Keaka?
A. Kaiwilei?
Q. Yes.
A. Yes.
Q. Died before you knew him?
A. Yes.
Q. Kahoiwai, you don't know whether—You don't remember whether he died before or after his mother?
A. No.
Q. Kalawaiaakanoa died before Keaka or after?
A. I think so; I don't know; I can't tell.
Q. Kalawaiaakanoa?
A. Kalawaiaakanoa.
Q. You think died before Keaka?
A. I can't remember.
Q. Paakuku, the first Paakuku, died before——
48 A. Yes.
Q. —her mother?
A. O yes.
Q. Palaualelo, did he die before Keaka or after?
A. I think after.
Q. After?
A. After Keaka, yes.
Q. Yes. Paakuku died afterwards?
A. Yes, Paakuku died afterwards.
Q. Yes, and Kahoohuli?
A. After Keaka.
Q. After Keaka. Now then your mother's name——

Mr. Andrews: The one who Mrs. Hapai is in doubt about, he died leaving no issue, so that there is no necessity of proving that part.

Q. Now your mother's name was Kamakanoenoe?

A. Yes.
Q. And your father's name was what, please?
A. Sniffen.
Q. Benjamin H. Sniffen?
A. Yes.
Q. And your father and mother had any children——
A. Yes.
Q. Yes. Now will you tell us, please—Of course! I beg your pardon.

Mr. Wilder: Whether she died before or after Keaka, the witness didn't state.

Mr. Andrews: No, I haven't asked her that yet. Did your mother—Was your mother living at the time of the death of Keaka?

A. No, she died before Keaka.
49 Q. Oh, she died before Keaka?
A. Yes.
Q. And your father?
A. Yes, died before my mother.
Q. Died before your mother. So that you were all—The children only——
A. Yes.
Q. —were living at the time of Keaka's death?
A. Yes.
Q. Now then who were the children? Name——

Mr. Wilder: I take it my same objection goes to anybody that died before Keaka?

The Court: I understand.

Mr. Wilder: So that it will go to all these questions in reference to Kamakanoenoe's children?

The Court: All right.

Mr. Andrews:

Q. Who were the children?
A. You mean the first one? Elijah.
Q. Yes, Elijah.
A. Elijah.
Q. Is he alive or dead?
A. He is dead.
Q. He is dead?
A. Yes.
Q. Did he leave any children?
A. No.
Q. The next one?
A. John.
Q. Is he alive or dead?
A. Yes, he is living.
50 Q. Alive. And the next one?
A. Myself.
Q. Yourself.
A. Harriet.

Q. Yes, and the next one?
A. Is Mary.
Q. Is she alive or dead?
A. Yes.
Q. She is alive. The next child?
A. Esther.
Q. Is she alive or dead?
A. No, she is dead.
Q. And she died without any heirs, or any children?
A. Yes, she has got some.
Q. And then came who?
A. Elijah.
Q. Elijah?
A. Another Elijah.
Q. Number two, is that it?
A. Yes.
Q. And he is alive or dead?
A. Yes, he is living.
Q. He is living?
A. Yes.
Q. The next one?
A. Samuel.
Q. Is he alive or dead?
A. Yes, he is living.
Q. The next one?
A. Noah.
Q. Is he alive or dead?
51 A. Yes, he is alive.
Q. He is alive. The next one?
A. Edward Mahina; they call him Mahina.
Q. Mahina?
A. Yes.
Q. Is he alive or dead?
A. Yes, he is living.
Q. He is alive?
A. Umhuh.
Q. The next one, please?
A. Dorcas.
Q. Dorcas; she is alive or dead?
A. Yes, she is living.
Q. The others, please?
A. Nelson, I think, is the last.
Q. Yes, and he is alive?
A. Yes.
Q. And then you—Was there a girl named Lily?
A. O yes, Lily; she is living.
Q. She is living, yes. Now then, Apia Lilinoe, she is alive or dead?
A. Yes, she is dead now.
Q. Did she die before or after Keaka?
A. After Keaka.

Q. Yes, died after Keaka, and she was married?
A. George Miner.
Q. George Miner?
A. Umhuh.
Q. And Apia Lilinoe is dead now?
A. Yes.
Q. And Mr. Miner is alive?
A. Yes.
52 Q. He- husband. Did they have any children?
A. No.

The Court: I think this exhibit, Mr.—in connection with Mr. Hapai's testimony, I presume is practically out, under the ruling, but I should like to have it reinstated for my own benefit, not as proving any facts but as a memorandum of the witness' testimony.

Mr. Andrews: In other words, merely as an assistance to the Judge. Instead of taking it all down you will have it before you. If there is no objection to that we will file it for that purpose.

The Court: Reinstate it as an exhibit simply for that purpose,—memorandum showing what the witness has testified to, not being as evidence to prove any fact.

Mr. Wilder: Not as evidence.

The Court: It may be reinstated.

Mr. Andrews:

Q. Now all these people that you have said are dead, Mrs. Hapai — (To the interpreter): If Mrs. Hapai don't understand you help.—did they die before the 5th day of June, 1911, when this suit was brought?

(Interpreter puts question.)

Q. The ones that you have testified—Were any of those you have testified are now dead, did they die, in other words, within the last two years?
A. I don't know; I think so; I think so.
Q. You think they were all dead; do you remember any of them that were alive two years ago?
A. Few years after my grandmother died?
Q. No, no, no, that is——

(Interpreter puts question.)

53 Q. Two years ago from this date.
A. Oh, two years. I don't think so; they are all dead.
Q. They all were dead?
A. Yes.
Q. Before 1911?
A. Yes.
Q. Yes. You are the mother of the plaintiff in this action, Henry C. Hapai, are you not?
A. Yes,

Mr. Andrews: That's all.

Mr. Wilder: What was that last question?
Mr. Andrews: Mother of the plaintiff,—for the record.

Cross-examination.

Mr. Wilder:

Q. Mrs. Hapai, what was Keaka's first name, Christian name?
A. Koleka Keaka.
Q. Koleka?
A. Yes.
Q. Has Nelson Sniffen any other name besides Nelson?
A. Keola.
Q. When did you get married?
A. 1870.
Q. Do you remember when Keaka died.
A. I can't remember.
Q. The approximate date?
A. 1867, I think, if I don't—I don't remember—either '67 or '68; I don't remember.
54 Mr. Andrews: What was that?
A. Either '67 or '68 when the funeral was.

Mr. Wilder:

Q. As far as you remember, when Keaka died how many children of hers were alive?
A. Let's see. I can't remember, but I know Apia Lilinoe and Paakuku was dead; they were dead all right, but I can't remember the boys.
Q. Well, how many children did Keaka have altogether?
A. I think nine.
Q. Nine?
A. Yes.
Q. And you know that at the time she died there were two of them dead; you are sure of that?
A. Yes.
Q. As to whether any others were dead or not you don't know?
A. I can't remember. There are some of the boys—I think there are some of the boys is alive, I think.
Q. When she died where were you living?
A. I was right there with her, right there with her.
Q. Right where?
A. Right where my grandmother was, at my father's house where she died, at my father's house.
Q. Where was that?
A. At Kaonoulu.
Q. At Kaonoulu?
A. Yes.
Q. Do you remember the litigation, any litigation about this land of Kaonoulu between Paakuku and her brothers and sisters?
55 Mr. Andrews: That we object to, if the court please, as not proper cross examination.

Mr. Wilder: I am inclined to think that is correct, as far as the litigation itself, it would not be proper cross examination, but testing her memory I have a right to ask it.

Mr. Andrews: Unless he is going to show that somebody was alive or dead at that time I don't think he can test the memory on an entirely immaterial matter or on cross examination bring out new matter, the witness being put on merely for the purpose of pedigree.

The Court: I understand not for the purpose of proving anything more than the fact of the litigation; as to the result of the litigation you do not expect to ask this witness?

Mr. Wilder: No, I am just asking if she knows about any litigation in regard to this land between Paakuku and her brothers and sisters.

The Court: I think that would be a fair question, testing the credibility of the witness.

Mr. Andrews: We except.

(Question put through the interpreter.)

A. You mean at the time that Keaka was alive?

Mr. Wilder:

Q. No, no, after Keaka died, as I say, between Paakuku and her brothers and sisters, after Keaka died.

A. Yes.

Q. With reference to your marriage when was that?

A. After; after I was married.

Q. After you were married?

A. Yes.

56 Q. After you married where did you live?

A. Hilo.

Q. You moved to Hilo after you married?

A. Umhuh.

Q. And lived there ever since?

A. Yes.

Q. That is, on the island of Hawaii?

A. Yes.

Q. As I understand it, Apia died after Keaka?

A. Yes.

Q. Do you remember how long after?

A. I can't prove; I don't know. A year after, I think, after Keaka.

Q. Then she died before you were married?

A. O, yes, she died before I married.

Mr. Wilder: That's all.

Mr. Andrews: That's all. That's all for the present, Mrs. Hapai.

Direct examination of Henry C. Hapai, recalled:

Mr. Andrews: I understand all Mr. Hapai's evidence was stricken from the record?

The Court: Yes, I think that is the better way.

Mr. Andrews:

Q. Mr. Hapai, you are the son of Mrs. Harriet Hapai, who was the last witness?

A. I am.

57 Q. And one of the plaintiffs in this action?

A. I am.

Q. You were acquainted with your uncles and aunts?

A. I am.

Q. Yes. Will you give me their names, please, the children of Kamakanoenoe and Benjamin H. Sniffen, if you knew them personally?

A. The original Elijah there, he wasn't here; he is dead; he died long before when he was a minor. Then there is my mother, Harriet; there is Mary; there is John——

Q. Well now, let's start—Your mother, Harriet, is alive?

A. That is my mother; then there is John, an uncle——

Q. Your aunt Mary, is she alive?

A. She is alive. John, he is an uncle in Kohala.

Q. He is alive?

A. Yes.

Q. You say the original Elijah died before you knew him; how did you know there was an original Elijah?

A. Oh, well, sometime ago my father used to talk to me and my mother used to talk to me about Elijah.

Q. Yes. Your father is dead?

A. My father is dead.

Q. Go on; next one, please?

A. John—I got as far as John?

Q. Elijah, John, Harriet, Mary.

A. Mary, then Esther.

Q. She is alive or dead?

A. She is dead.

Q. Did she leave any children?

A. Mrs. De Bolt.

Q. Mrs. De Bolt?

58 A. Yes.

Q. Any other issue at all?

A. I don't think so; I think that is her only child,—Mrs. De Bolt.

Q. Then who was the next?

A. Who have we got,—Esther? Then Elijah again; he is living down here at Palama——

Q. And the next one?

A. No, he is on Kohala.

Q. Alive?

A. Alive.

Q. Next one?

A. Then Samuel.

Q. Yes.

A. He is in Makawao.

Q. And Lily?

A. Lily, she is in Makawao. Dorcas, she is in Hilo.

Q. All these you are speaking of——
A. They are all alive.
Q. ——are alive. Next one?
A. Next one is Mahina; he is down Moanalua; then the next one is Nelson. He lives at Makawao.
Q. One of the plaintiffs in this action?
A. He is one of the plaintiffs in this case.
Q. Now did you know a person named Keano, the child of Kahoohuli and——
A. Holoia.
Q. ——and Holoia?
A. I know her.
Q. Is she alive or dead?
A. She is dead.
59 Q. She is dead?
A. She is dead.
Q. Did she leave any issue?
A. Why, she has a son that—She had a son and a daughter. The daughter is dead; I believe the son is living in Lahaina.
Q. Now who is that?
A. She is young David Eldredge——
Q. I mean who are you speaking of now?
A. Keano.
Q. Keano?
A. Daughter of—Is that Keano—Did you want her? Oh, Kahoohuli and Holoia——?
Q. Yes.
A. Oh, that Keano, she is living; she is alive.
Q. You were speaking of the other?
A. The other Keano.
Q. Yes, who was the child of Paakuku?
A. Child of Paakuku. The Keano, the child of Kahoohuli, is alive.
Q. And her brother—Did she have a brother?
A. She has a brother.
Q. You knew them?
A. I don't know the brother; I know Keano.
Q. Yes. Did you know the brother?
A. I knew she had a brother, yes.
Q. The brother is alive or dead?
A. He is dead.
Q. Yes; what was his name, do you remember?
A. Kaaikaua.
Q. How did you know about him?
A. Well, I have had all these things as far back as 1902.
60 I have heard it in general course of events and my father would refresh my memory on all these things and he further refreshed my memory in 1908, in April, 1908.
Q. You mean family history which was——
A. Family history, yes.
Q. Now then did you know of your own knowledge—You didn't

know of your own knowledge Paakuku, whose child Keano—whose child Keano is—has no heirs?

A. I only know from information. I have just said that I got—that I got all these things from my—from general——

Q. The family?

A. The family and——

Q. Yes, but you didn't know her personally?

A. O no.

Q. She was dead before you knew her?

A. She was dead before I knew her?

Q. Do you know the children of your great grandmother, Keaka, child—Do you know of him named Kahoiwai?

A. Kahoiwai?

Q. Kahoiwai, yes.

A. The same as I know Paakuku. They were all dead before I——

Q. You heard of him. Did you know whom he married?

A. Heleloa.

Q. Yes. Do you know whether they had any children?

A. They had six.

Q. Yes. Did you know any of those children?

A. Kenoiaina and Pahukula.

Q. Do you know—And did you know Kenoiaina and——

A. Kenoiaina, and I met Pahukula when I was quite a child, but Kenoiaina, I know her well.

61 Q. Who was the other one, please?

A. Pahukula.

Q. Oh, Pahukula. He is alive?

A. He is alive.

Q. And Kenoiaiana is alive?

A. Kenoiaina is alive; she is in Kohala.

Q. They are both alive?

A. Yes.

Q. Do you know—ever hear or know from either your mother or father whether there were any other children of the brothers and sisters?

A. No.

Q. You don't know as to the rest of that family?

A. No.

Q. Of your own knowledge. Have you deeds to the property in question from any of the heirs?

A. I have.

Q. Will you let us have them, please, so I can offer them in evidence?

A. (Handing Mr. Andrews document.) That is John Sniffen.

Mr. Andrews: We offer in evidence, if the court please, deed from J. B. Sniffen, North Kohala, Island and County of Hawaii, Territory of Hawaii, to Henry C. Hapai, dated the 15th——

Q. Is this a certified copy or original?

A. That is the original.

Q. Well, the date is signed in pencil here.
A. That has been acknowledged.
Q. Was the original date in here?
A. That is the original document.
Q. May be it is in ink; in fact it is in ink, but it is so
62 fine I thought it was pencil—Dated the 15th day of June——
A. 1910, isn't it?
Q. Yes, 1910.
A. There is the acknowledgment on the front of it.

Mr. Andrews: Yes, and recorded in Liber 338, pages 151, 152 of conveyances.
The Court: What does that purport to convey?
Mr. Andrews: Purports to convey all his interest in the lands to Henry C. Hapai.
The Court: What do you contend to be the interest, the amount of interest conveyed by this particular deed?
Mr. Andrews: Well, I would have to figure it out. I think Mr. Hapai knows better than I do.

The Court:

Q. What percentage of interest, Mr. Hapai, did John Sniffen convey in this estate?
A. Everything he has got.
Q. Well, I know, but what percentage was his percentage, according to your claim?
A. His percentage in his—in his mother's interest and in—all his percentage in law and equity, all the other interest. He had no heirs.
The Court: My point is, have you summed up what you claim to have acquired?
Mr. Andrews: Perhaps we'd better do that later, your Honor, because, I am perfectly frank with your Honor, there are so many questions as to the question of construction, as to how much he had and the other heirs, that it would be a question of argument to be presented to the court at the conclusion of this case.
The Court: Very well.
63 Mr. Wilder: I object to the introduction of this deed. This brings the thing flatly before the court as to whether Kamakanoenoe, under the will of Keaka, took any interest or not. We contend that under that will only those children of Keaka, under the construction that has been put upon it, took an interest who were alive at the time of the death of Keaka. When the will leaves certain property to Paakuku and her brothers and sisters it is those brothers and sisters that were alive when Paakuku died, namely, as the will I think shows, March 17th, 1868, and it is undisputed that Kamakanoenoe was then dead. As I contend, under that will she took no interest then. As, for instance, if there had been no brothers and sisters alive at the time that Keaka died except Paakuku, Paakuku would have taken the whole thing, under any construction of the will.
(Argument.)

The Court: Well, I think I'd better overrule your objection for the purpose of getting a view of the whole case.

Mr. Wilder: Well, what I understand——

The Court: I am rather inclined to hold that your contention in regard to the law is as you say. At the same time I think this particular objection ought to be overruled for the purpose of getting a survey of the situation in its entirety.

Mr. Wilder: Well, does that go in as passing an interest in the estate of Kamakanoenoe?

The Court: It may be; that is to say, in this way, as Mr. Andrews has said, that is where the collateral heirs may come in.

Mr. Wilder: I understand your Honor lets it in in so far as it purports to convey an interest which this grantor, John B.
64 Sniffen, might have acquired from some other than through his mother?

The Court: Yes.

Mr. Wilder: The court not ruling on the other question at all at this time?

The Court: Not ruling finally. I let it in for that purpose, anyway.

Mr. Wilder: I save an exception.

(Exhibit "L.")

Mr. Andrews:

Q. I ask you if you knew the child of Palaualelo?
A. Palaualelo?
Q. Yes, the son of Keaka, and his wife Kahinalau.
A. I know the daughter, Ana, Ana Kamakapaia.
Q. Her name was Ana?
A. Yes.
Q. What was her last name?
A. Kamakapaia.
Q. I hand you this deed which I hold in my hand and the grantor of that is the Ana that is mentioned as——
A. Daughter of Palaualelo.

Mr. Andrews: Yes. We offer in evidence, if the court please, the deed of Mrs. Ana Kamakapaia to Henry C. Hapai, the lands in question, dated the 4th day of August, 1910, and recorded——

The Court: What is the name now, again?

Mr. Andrews: Ana; in the genealogy it is Ana, but Ana Kamakapaia; recorded the 9th day of August, 1910, in Liber 161 of Conveyances—No, I beg your pardon, Liber 338 of Conveyances, page 161.

The Court: I understand you have made no computation?
65 Mr. Andrews: I have not.

The Court: As to the amount of interest that this deed——

Mr. Andrews: I have not. You see, your Honor, it would depend a great deal on your Honor's ruling on these other questions. We will have that prepared before the end of our case,—our claim.

The Witness: That is Kahoiwai's child, number two on the——

Mr. Andrews: Yes. We have here——
The Witness: Kenoiaina.
Mr. Andrews: Yes, the——

Q. Did you know Kenoiaina?
A. Yes.
Q. You testified you knew Kenoiaina, a daughter of Kahoiwai?
A. I did.
Q. Kahoiwai——
A. Kahoiwai.
Q. —and Helelca?
A. Umhuh.
Q. Yes; what was her last name?
A. Sniffen.
Q. I hand you this deed which I have in my hand and ask you if she is the grantor of that?
A. She is the daughter of Kahoiwai.
Q. Yes, the grantor of this deed is the daughter of Kahoiwai?
A. Yes.

Mr. Andrews: We offer in evidence, if the court please, a deed from Kenoiaina Sniffen to Henry C. Hapai, dated the 4th day of August, 1910, and recorded in Liber 160—no, Liber 338, page 160.

Q. You have testified that the brother of this—of the last
66 grantor was named Pahukula?
A. Pahukula; S. Pahukula Kahoiwai.
Q. His last name is Kahoiwai?
A. Kahoiwai.
Q. The same as his father, and the grantor of this deed which I hold in my hand is that person?
A. Son of Kahoiwai.

Mr. Andrews: Yes. We offer in evidence, if the court please, a deed from Pahukula Kahoiwai to Henry C. Hapai of the lands in question, dated the 17th of September, 1910, and recorded in Liber 337, on pages 280 of conveyances. This deed is in Hawaiian, your Honor. I don't know what—do we have the court—to have the interpreter translate it?

The Court: No, not necessary; the court takes judicial knowledge of the Hawaiian language.

Mr. Wilder: What does that purport on its face to be?

Mr. Andrews: Why, presume it is a deed from this party to Henry C. Hapai.

The Witness: It is the same. I had to put it in native so they can understand.

Mr. Wilder: It is a deed, all right, but there is some discrepancy in there of the grantor.

The Court: Simply describes himself as the heir of Kahoiwai, Kahoiwai being the heir of Keaka, of his mother Keaka.

Mr. Wilder: All right.

The Court: It may be admitted.

Mr. Wilder: I suppose this is subject to my objections made before your Honor—all of these deeds?

The Court: Very well.

Mr. Andrews: I now offer the—a deed by Elijah Sniffen
67 to Henry C. Hapai, dated the 19th day of July, 1910, recorded in Liber 337, page- 162 and 163.

Q. That Elijah Sniffen is your uncle?

A. Down here, living.

Mr. Andrews: We offer in evidence the—a deed from Mahina Sniffen to Henry C. Hapai—

The Court: That may be marked Exhibit "P" (referring to last offer).

Mr. Wilder: Same objection to this deed.

Mr. Andrews: I understand you have an objection to the introduction of all these?

Mr. Wilder: Yes, I understand my objection goes to all of these deeds, without specifically making it each time.

Mr. Andrews: Yes, no objection to that.

Mahina Sniffen and his wife to Henry C. Hapai, dated the 18th day of July, 1910, recorded in Liber 337, page 164.

The Court: Are these all in Hawaiian?

Mr. Andrews: No, these are in English, your Honor. We offer in evidence, if the court please, deed of Samuel Sniffen of Makawao, County of Maui, to Henry C. Hapai, dated the 16th day of July, 1910, and recorded in Liber 337, page 163.

(Exhibit "R.")

We offer in evidence a deed from Noah K. Sniffen of North Kohala, Island and County of Hawaii, to Henry C. Hapai, of the property in question, dated the 15th day of July, 1910, and recorded in Liber 338, on page 152.

The Court: Is this the same.

Mr. Andrews: I think so, just the same.

The Witness: This is Lily Sniffen Eldredge——

68 Mr. Andrews: We offer—This is the deed of Noah Sniffen, your Honor.

(Exhibit "S.")

Q. Lily Sniffen, your aunt——

A. That is my aunt.

Q. Did she marry?

A. She is a widow now.

Q. She is a widow, and who did she marry?

A. The first husband was Newton, then she married David Eldredge.

Q. And she goes by the name of what?

A. Lily Sniffen Eldredge.

Q. And I hand you a deed I have in my hand; is the grantor of that deed the Lily Sniffen who is your aunt?

A. She is.

Mr. Andrews: Yes. We offer in evidence, if the court please,

Lily Sniffen Eldredge to Henry C. Hapai, deed dated the third day of August, 1910, recorded in Liber 338 on page 221.

Mr. Wilder: The same objection.

The Witness: Dorcas Hattie——

(Exhibit "T.")

Mr. Andrews:

Q. Your aunt Dorcas, did she marry?
A. Hattie.
Q. A man named Hattie?
A. Yes sir.
Q. And known now by the name of Dorcas Sniffen Hattie?
A. Yes.
Q. I ask you whether the grantor of this deed I hand you is your aunt?
69 A. She is.

Mr. Andrews: We offer in evidence deed of Dorcas Sniffen Hattie, if the court please, to Henry C. Hapai, dated the first day of August, 1910, recorded in Liber 338, on page 220.

(Exhibit "U.")

Q. Your aunt Mary Sniffen, did she marry?
A. Kaiheani.
Q. And is known as Mary Elizabeth Kaiheani now?
A. Kaiheani.
Q. I hand you a deed and ask you whether the grantor in this deed is your aunt?
A. She is.
Q. Mary Elizabeth Kaiheani?
A. She is.

Mr. Andrews: We offer in evidence, if the court please, deed from Mary Elizabeth Kaiheani to Henry C. Hapai, dated the 14th day of July, 1910, and recorded in Liber 338 on page 150.

We offer in evidence, if the court please, deed from Harriet Hapai of Hilo to Henry C. Hapai and George W. A. Hapai of Hawaii, interests in the land in question—Harriet C. Hapai and husband.

The Court: This is getting to your immediate family?
A. Yes, my immediate family.
Q. One of your sisters?
A. My aunts and uncles. That is my mother.

Mr. Andrews: This particular deed is his mother's deed. Recorded on the 9th day of November, 1906, in Liber 285, page 189. It is in Hawaiian.

We have also an additional deed from Mrs. Hapai, which
70 I might call a correction deed, which I now intend to offer, completing any question of title in the other matter. In order to offer that we would have to offer this first.

Mr. Wilder: The same objection, your Honor.

The Court: Very well.

(Exhibit "W.")

Mr. Andrews: We now offer, if the court please, additional deed between Harriet Hapai, widow, and Henry C. Hapai and George W. A. Hapai, dated the 28th day of June, 1910.

The Court: This may be admitted.

Mr. Wilder: Same objection.

Mr. Andrews: We now offer in evidence, if the court please, deed from George E. Miner to Henry C. Hapai, in Hawaiian, presumably of the land in question, on the 9th day of January, 1910, and recorded in Liber 332 on page 208.

Q. George E. Miner is the husband of——
A. Of Apia Lilinoe.
Q. Yes. She is dead?
A. She is dead.

Mr. Wilder: Just the same objection.
The Court: It may be admitted.
(Exhibit "Y.")

Mr. Andrews: I think that's all. Cross-examine.

Cross-examination.

Mr. Wilder:

Q. Was, Henry, this fellow Elijah Sniffen that you talk about sometimes referred to as Laiki,—isn't he?
A. Laiki.
Q. Laiki in Hawaiian, or Elijah——
71 A. Elijah in haole; that is, he is known by that; natives call him Laiki.
Q. Was there a Namoomoo Sniffen?
A. That is Dorcas.
Q. Oh, Dorcas, the one you referred to merely as Dorcas, married to a man by the name of Hattie?
A. Dorcas Hattie; that is the same.

Mr. Wilder: That's all.
Mr. Andrews: That's all. Mr. Miner; call Mr. Miner.

Direct examination of GEORGE E. MINER:

Called and sworn.

Mr. Andrews:

Q. Mr. Miner, you married Apia Lilinoe?
A. Yes.
Q. The daughter of Keaka, did you not?
A. Yes sir.
Q. And you knew Keaka in her lifetime?
A. Eh?
Q. Will you interpret (To the interpreter): You knew Keaka in her lifetime?
A. O yes.

Q. Yes. You understand me thoroughly?
A. Yes.
Q. We want to find out—You lived near Keaka and knew her at the time of her last sickness, did you not?
A. What you say?
72 Q. You remember the last sickness of Keaka?
A. O yes.
Q. And when she died?
A. O yes.
Q. Now we want to know who of her sons and daughters were alive at the time she died.
A. Before she died?
Q. At the time she died; when Keaka died how many children were alive? That is what we want to know.
A. There is one, two—five.
Q. Five were alive?
A. Three daughters and two men.
Q. And the names of those that were alive were what?
A. At that time?
Q. Yes, at that time.
A. Yes.
Q. What were their names that were alive?
A. Paakuku.
Q. Yes.
A. And Kahoohuli.
Q. Kahoohuli?
A. Yes.
Q. She was alive?
A. Yes, and my wife, Apia.
Q. Yes.
A. And Kahoiwai was a brother.
Q. Kahoiwai, he was alive?
A. He was a brother; he was alive at that time. Palaualelo——
Q. And what was the last one?
A. Palaualelo.
73 Q. O yes.
A. That is two brothers.
Q. Palaualelo, he was dead?
A. Yes.
Q. You knew the family well?
A. Yes.
Q. Then the only children that were dead were Kaiwilei——

Mr. Wilder: The other four were dead.

Mr. Andrews: I thought we would get their names so there wouldn't be any question about it. Well, that's all, thank you, Mr. Miner, just now. You may cross examine.

Mr. Wilder: No, I have no questions.

Mr. Andrews: That's all, thank you, at present, Mr. Miner. I think we rest now, your Honor.

Mr. Wilder: Subject to our objection as to what these various deeds convey we will go ahead.

Our position is this, your Honor: We claim first—Defendants claim title to this land by formal adjudication; in the next place defendants claim a paper title to the land in question, to the whole of it, and in the third place they also claim title by prescription, that is, by adverse possession.

The Court: To the entire land?

Mr. Wilder: To the entire land described in the complaint; and I will now offer a copy of the record in Kahoiwai and others against Paakuku, No. 165, Equity Division, certified as provided by the statute by J. A. Thompson, Clerk of the Supreme Court of the Territory and custodian of the records and archives of said supreme court, in which these parties that have been testified to as being the children of Keaka are all parties, the children of those that
74 were dead are all plaintiffs and Paakuku is the defendant.

It appears—before I pass it over to the counsel—that these various separate minors were defendants; afterwards they were made plaintiffs by this same proceeding, and the same claim that is made by plaintiffs now was made then and adjudicated against the contention of the present plaintiffs. The decision is reported in the 6th Hawaiian, 124.

Mr. Andrews: Our objection to this record, if the court please, is that you cannot prove a title to real estate—You can't have a title to real estate set up in a proceeding in equity, as was decided in Brown against Harrison, or Harrison against Brown, that I cited to your Honor the other day in the case that you could not in an equity proceeding adjudicate title to land.

Mr. Wilder: I may add that this is also offered for the purpose of showing an exclusive claim of Paakuku to this land, and also for the purpose of showing admissions by the predecessors of plaintiffs; that is, Mrs. Harriet Hapai and her brothers and sisters.

Mr. Andrews: Well, we certainly would object to any——

Mr. Wilder: I have a further and one more. It also shows a deed from Keaka to Paakuku, dated March 11th, 1868, about a week before she died—before Keaka died.

Mr. Andrews: Well, we certainly object. We know of no rule whereby the record can prove any of these things. We object—first ground—on the ground I have stated, and we certainly object to the others on the ground that they are not—that no certified copy of a record, as far as we know, can show—is the best evidence to show any of the allegations set forth by Judge Wilder that he expects to prove.

75 (Argument.)

Our objection is—I don't care if it is an original record; I don't object to it because it is a record but, if the court please, they cannot—there is nothing in an equitable proceeding, as far as I can see there, unless it is specially pointed out by Judge Wilder—We shall certainly object to a so-called deed, copy of a deed, in an equitable proceeding being offered as—when there is no showing as to where the best evidence is.

(Argument.)

Our first objection is that it is an attempt to adjudicate a legal title

to an equitable decision, and that we are not estopped in an equity case from proving our title in law; and, secondly, we object to the other offer—the other reasons that it is offered—on the ground that they are not the best evidence; in other words, that you can't prove a—you can't prove admissions from a certified copy of a record unless the specific admissions have been pointed out; you can't offer an entire record under that statement that you are going to prove an admission; and, thirdly, that any offer of a deed, or by offering the entire record and reading into the record of this case a deed, would not be the best evidence, would be no evidence that the deed was recorded or whether or not it was recorded or whether or not there was any question. Certainly a copy, a certified copy would not be the best evidence, even under our statute.

(Argument.)

The Court: The ruling of this court—I will make the ruling limited, that the offer is accepted of this record, No. 165, Equity Division of the Supreme Court, as showing the former ad-
76 judication of the matter now pending before this court.

Mr. Andrews: We except to the court's ruling in allowing the equity record in evidence for the purpose as set forth.

The Court: Exception may be allowed.

Mr. Andrews: Plaintiff excepts.

Mr. Wilder: Of course that would dispose of the case.

The Court: I presume it does.

Mr. Wilder: I would like to take a few minutes. The question in my mind is this: I have got witnesses down here as to adverse possession also, whether or not to put them on. Of course in the face of that it is not necessary. I would just like to have a few minutes.

The Court: Very well.

Mr. Wilder (after consultation): I think, your Honor, we will go ahead and put on these witnesses that we have summoned down from the Island of Maui, on the question of prescription as well.

The Court: Very well.

Mr. Andrews: Does your Honor hold that your Honor—these are admitted for the purpose of proving that deed?

The Court: No.

Mr. Andrews: The validity of the deed or not? It is merely as to an adjudication by the court on this action?

The Court: I limited my ruling to that effect.

Mr. Andrews: Yes.

77 Direct examination of PIA COCKETT, called and sworn:

Mr. Wilder: Your Honor—Just before we go on, you didn't pass on those other points at all?

The Court: No, admitted purely and simply as evidence of former adjudication between the same parties.

Mr. Wilder: To the same land?

The Court: To the same land, which resulted in the favor of the defendant. In fact I presume as a matter of fact, or law, it would end the case right there. Question, whether we are not now going

beyond the province of the court in this particular proceeding to go on and take this particular testimony. Am I sitting now as a judge to determine the issue, or am I sitting here as a commissioner?

(Argument.)

Mr. Wilder: Well, if your Honor refuses to hear it—don't want to hear it, why that is one thing. My idea was to put it in and have your Honor pass on it. If your Honor is not going to pass on it I am not going to put it in.

The Court: I don't see how I could. It seems to me it would be rather stultifying the present situation. I have held that there has been a former adjudication by which the present plaintiff takes nothing—the predecessor in title takes nothing.

Mr. Wilder: Well, I—to make it plainer, then, I think I'd better have it appear on the record that I am prepared to prove, as one of our defenses, the title to this land in the defendants by prescription; that is, by adverse possession.

78 I am also prepared to prove paper title,—deed from Keaka to Paakuku and from Paakuku down, through various mesne conveyances, to these defendants. That is in accordance to the stipulation. You do not claim from Paakuku?

Mr. Andrews: No. We say that we are prepared, also, with evidence to rebut either of those matters if they come up in court.

The Court: The Court takes the view that the admission of the record showing a prior adjudication, by which the predecessors in title of the now plaintiff were held to take nothing, that that is a final determination of the present issue in this case and for that reason declines to accept the offer of the defendant to show title by prescription or by paper title.

Mr. Andrews: Do you rest, then, Judge?

Mr. Wilder: Under those circumstances, then, we rest.

Mr. Andrews: We offer in evidence, if the court please, Probate Record 1022, Vol. 13, Fol. 539, being the probate on the will of Paakuku, deceased, in the supreme court in 1876, being subsequent to the decision of the case of Kahoiwai versus Paakuku, in which the complainants to this action contested in—the distribution of her estate to her heirs, of this estate in question, and claimed their interest therein, which probate proceeding was never decided by the supreme court and is still in abeyance, and under which our clients have since that time claimed their title in the land and, as we are ready to prove, have held possession of a portion of land, awaiting a final determination of this matter.

79 Mr. Russell: That is objected to as immaterial and does not purport to be any decree which would be binding on this court or any decree which would be binding upon any proceedings, and if the offer is for the purpose of proving a filing of protests there, that they are merely self-serving declarations, made subsequent to the proceeding shown by the record in that case.

Mr. Andrews: That wouldn't be any protest; counsel is mistaken. If I used that word I am mistaken. It is objection to the distribution of the estate and claim that the—and claims to be entitled to a portion of the estate noticed in said will.

(Argument.)

It shows, if the court please, that they made—at that time they did not consider themselves estopped and were proceeding in what they thought the legal way to test the title to Kaonoulu.

The Court: At the same time that does not set aside the adjudication that went to its confirmation.

Objection sustained.

Mr. Andrews: Exception. We now offer——

The Court: Do you wish to have this filed for identification?

Mr. Andrews: I wish, yes—I wish they would be—your Honor would file them for identification.

The Court: The documents may be received and marked for identification.

Mr. Andrews: We now wish to offer, in further rebuttal of the documents filed by Judge Wilder as to an adjudication, a power of attorney given by Paakuku to David Eldredge and on record in the Bureau of Conveyances. I have sent for it; the boy—I had
80 him here and he went off for some reason. I think in 1872; the exact date I will give your Honor as soon as he arrives; whereby it is shown that Paakuku in this declares she takes under the will of Keaka and under that alone; she does not claim to hold this property either by an equitable adjudication under the deed, or under any deed, but as sole devisee of Keaka.

Direct examination of GEO. C. KOPA, called:

Mr. Andrews: I have made this offer. If counsel objects to it——

Mr. Wilder: Well, we object to it; of course I don't know just what it is; he has stated kind of generally; I don't even know the date. If he will make the offer a little bit more definite? In fact I would like to look at it.

Mr. Andrews: Well, here it is in Hawaiian again. We offer in evidence from Liber 44 of Conveyances, page 183, power of attorney from Paakuku to D. P. Eldredge, dated the 11th day of February, 1875, wherein she sets forth—I had a translation of this once——

The Court: I understand this is in rebuttal of the record that has been admitted?

Mr. Andrews: Yes, in rebuttal; that she makes him her attorney-in-fact of any property she may have under the last will and testament of Keaka, deceased, any rights she would have under the last will and testament of Keaka, deceased.

81 Mr. Wilder: Well, we object to that on the ground that—isn't *in*consistent with the adjudication that has already been made, and further on the ground, as your Honor will remember, in this same adjudication it was held that there was other property, personal property, in that will; further on the ground this was after the adjudication, February 11th, 1875.

The Court: Objection sustained and the certified copy may be admitted for identification.

Mr. Andrews: Exception, if the court please. I guess that is about all we have got on that phase of it.

Mr. Wilder: I understand the stipulation is still in force that plaintiffs do not claim anything through Paakuku?

Mr. Quarles: There was a stipulation here; the whole stipulation was in court, presented for record in this case, to the effect that both parties claimed under the will of Keaka. That is an admission of record—both parties claiming under the will of Keaka.

Mr. Wilder: I don't understand that. I don't understand that both claim under the will of Keaka; I understand the proposition was that the defendants claimed through Paakuku.

Mr. Andrews: It must be in the original record.

Mr. Wilder: Oh, here it is; I have a copy of it.

The Court: That has got to be renewed in this case to make the record complete.

Mr. Wilder: Well, might just put on record that the stipulation dated November 25, 1912, and filed in this case, is renewed for the purposes of this trial.

Mr. Andrews: Well, it is a part of the case anyhow, I think. Then we rest.

Mr. Wilder: Defendants move for judgment.

82 The Court: Judgment may be entered in favor of the defendants on the record of the case as it now stands.

Mr. Andrews: We except to the judgment—if that is the proper thing—on the ground that it is contrary to the law and the evidence and the weight of evidence, and I understand the court rules that we don't have to give notice of motion for new trial?

The Court: I think not.

Mr. Andrews: So therefore we do not do so, under that ruling of the court.

The Court: Exception is allowed.

Mr. Andrews: And do we have—obtain an order from your Honor, or do we wait until the decision is filed before we obtain an order as to the time for our exceptions?

The Court: Well, your exceptions are allowed now. You mean preparing your bill of exceptions?

Mr. Andrews: Yes, your Honor.

The Court: The usual way is to give your order to the stenographer upon the coming in of the judgment.

Mr. Andrews: Well, we will give the order to the stenographer, but it is very clear that we won't be able to—I doubt if we will be able to get the record within ten days.

The Court: Well, there will have to be a written decision filed.

I hereby certify the foregoing to be a complete and accurate extension of my shorthand notes of the proceedings had and testimony taken during the trial of the above entitled cause (second trial).

J. L. HORNER,
Official Shorthand Reporter.

83 Endorsements: L. 7566. Reg. 4, Pg. 30. Henry C. Hapai v. May K. Brown. Transcript of Evidence. Filed Sep. 6, 1913, 9:40 o'clock A. M. J. A. Dominis, Clerk.

No. 734. Received and filed in the Supreme Court this 15th day of September, 1913, at 10:20 A. M. J. A. Thompson, Clerk.

84 OAHU, *ss:*

Supreme Court of the Hawaiian Islands.

Stamp.

KAHOIWAI K., PALAUALELO k., KAHOOHULI w., & KANAINA, Her Husband; Kealopelapela, Keohokii (k), Moeikauhane (w), and George Clark, Her Husband; Kaiiwilei (k), Harriet Hapai, & Akau Hapai, Her Husband; Esther Wilson and William Wilson, Her Husband; Elizabeth Sniffen Liloi and Liloi, Her Husband, Complainants,

against

PAAKUKU (w), LILII SNIFFEN, LAIKI SNIFFEN, SAMUEL SNIFFEN, Noa Sniffen, Miner Sniffen, Keola Sniffen, and Namoomoo Sniffen, Minors, by George E. Miner, Their Guardian; Keoni Sniffen, Wong Ko, J. Komoekehuehu, and A. Roderick, Defendants.

Kamehameha V, by the grace of God of the Hawaiian Islands King, to Wong Ko, one of said defendants, Greeting:

The above named Complainants having filed their Complaint in our Supreme Court against the above named defendants praying for an Injunction against said Wong Ko one of said defendants requiring him to refrain from certain acts in said complaint and more particularly hereinafter mentioned; on reading the said Complaint in this action duly verified by Kahoiwai (k) one of said complainants and it satisfactorily appearing to a Justice of our Supreme Court therefrom that it is a proper case for an injunction and that sufficient ground exists therefor and that the said Wong Ko
85 one of the defendants is committing great waste and destruction upon the trees, timber, saplings and firewood growing and being in and upon the Ahupuaa of Kaonoulu in the District of Kula Island of Maui, portion of the real estate described in said Bill of Complaint and whereas it is averred that said waste, destruction and damage are *im*parable and tend to destroy the value of the inheritance and that the said Wong Ko is not able pecuniarily to respond in damages for such waste, destruction and damage so committed on said Ahupuaa of Kaonoulu as aforesaid.

We therefore in Consideration thereof and of the particular matters in said Complaint set forth do strictly command you that you the said Wong Ko and your Servants Workmen and Agents do absolutely refrain from committing waste spoil or destruction on the said Ahupuaa of Kaonoulu in the District of Kula, Island of Maui, and from Cutting down any timber or other trees or saplings growing upon said real estate and from hauling or transporting any timber firewood logs or trees on said Ahupuaa of Kaonoulu or from selling or otherwise disposing of the same until further order of our Supreme Court herein—And further commanding the said Wong Ko one of said defendants to be and appear before the first Associate Justice of the Supreme Court at the Court house in Honolulu on

Friday the first day of December, A. D. 1871, at 10 o'clock in the forenoon to show cause why said Injunction should not be made perpetual.

Witness the Honorable Elisha H. Allen, Chief Justice of our Supreme Court and Chancellor at Honolulu this Sixth day of November, A. D. 1871.

[SEAL.] WALTER R. SEAL,
Clerk Supreme Court.

86 Before the Honorable Alfred S. Hartwell, First Associate Justice of the Supreme Court and Vice Chancellor of the Hawaiian Islands.

KAHOIWAI (K) et als.
vs.
PAAKUKU (w) et als.

Bill of Partition.

To the Honorable Alfred S. Hartwell, First Associate Justice of the Supreme Court and Vice Chancellor of the Kingdom:

Humbly complaining, show unto your Honor, Your orators and oratrixes, Kahoiwai (K) of Honolulu in the Island of Oahu Palauolelo of Kohala in the Island of Hawaii, Kahoohuli (w) and Kanaina her husband, of Konokohau, in the Island of Maui. Kealopelapela (w) widow of Keiwilei (k) deceased, and Keohokii (k), Moeikauhane (w) and George Clark, her husband, and Keiwilei (k) of the Island of Hawaii, children and heirs of the said Keiwilei, deceased, Harriet Sniffen, and Akau Hapai, her husband, residing in Hilo, Hawaii, Elizabeth Sniffen and Liloi, her husband. Esther Sniffen and William Wilson, her husband, residing in Honolulu, Island of Oahu, all being the lawful issue and heirs of Makanoinoi (w) and B. F. Sniffen, her husband, both deceased:

That Keaka (w) died on the 17th day of March 1868 at Kula in the Island of Maui aforesaid; that during her lifetime and at the time of her death, she was seized and possessed of the real estate hereinafter described, which she inherited as the heir of her brother Hewahewa, deceased; That the said Keaka, deceased, was married to one Nahinalau, who died before the said Keaka, deceased, and has issue of said marriage as follows: 1. Keiwilei (k) deceased, who was married to your oratrix Kealopelapela (w) and has issue,
87 your orators Keohokii (k) Moeikauhane (w) the wife of George Clark, and Keiwilei: 2. Your Orator Kahoiwai: 3. Kalawai Kanoa (k), deceased, who left no living issue: 4. Paakuku (w) who died without issue. 5. Your orator Palauolelo (k). 6. Paakuku (w) (the defendant hereinafter named). 7. Your oratrix Kahoohuli (w). 8. Makanoinoi w deceased, married to B. F. Sniffen, deceased, who has issue your orators and oratrixes, Harriet, Elizabeth, and Esther, also Keoni (k), Lilii, Laike, Samuel Noa, Keolo and Namoomoe Sniffen: 9. Apia (w) who was married to

George E. Miner and died without issue after the death of said Keaka, deceased: That during her life and at the time of her death the said Keaka was seized and possessed (in fee simple) of the following described real estate, to wit: 1. The Ahupuaa of Kaonoulu. at Kula in the Island of Maui, containing about 30,000 Acres, included in the Land Commission Award No. 3237 herewith shown to the Court in Exhibit Marked "A" and made a part of the Bill of Complaint; 2. The tract of land called Kaluapulu, designated in the award of Land Commission No. 3237 as Iliana Apana 1. in Kalihi, Island of Oahu, which is herewith shown to the Court in Exhibit Marked "B" and made a part of this Bill of Complaint, and for a more detailed description of which said tract of land reference is made to the deed from the said defendant Paakuku to John Ii in Exhibit marked "C" and made a part of this Bill of Complaint, the whole embracing 8 Tracts of Kuleanas of land containing 92 acres; 3. A Kuleana of land in Wailuku, Maui, designated in Award No. 3237 and accompanying Survey, which is herewith shown to the Court in Exhibit "D" and made a part of this Bill of Complaint, containing 4 67/100 Acres;

That after the death of the said Keaka, the said Paakuku, (w) (whom your orators and oratrixes pray may be made a party *de*-defendant to this Bill of Complaint), went into possession of said real estate, jointly with your orators and oratrixes and the other heirs of Makanoinoi (w) and her husband B. F. Sniffen, both deceased and has with your said orators and oratrixes continued in possession of the same, except that portion sold by the defendant—Paa-
88 kuku as hereinafter mentioned, and so far as a certain Lease made by the said defendant Paakuku as hereinafter mentioned affects the possession; that the said Keaka before her death on the 12th day of February 1850 made an instrument in writing, anomalous in its character, partaking of the nature of a will and also of a deed of trust, which was afterwards, to-wit: on the 15th day of December 1868 on the petition of the said defendant Paakuku, admitted to probate as the last Will and Testament of the said Keaka, deceased, by the Honorable James W. Austin, then second Associate Justice of the Supreme Court, sitting in probate, and at the request of the said Defendant Paakuku, one J. Kamoikehuehu, whom your orators and oratrixes pray may be made a party defendant to this Bill of Complaint, was appointed Administrator of said Estate, with the Will annexed, a copy of which said instrument in writing as also a Translation of the same is herewith shown to the Court in exhibit "E" and made a part of this Bill of Complaint, and the records of the said Probate Court of the said 15th of December 1868 are referred to in proof; that the said estate has been fully administered upon and the said administrator discharged on the 16th day of December, 1869, before the Honorable H. A. Widdemann, Second Associate Justice of the Supreme Court, sitting in Probate, as by reference to the records of that date will more fully appear:

That, by the said instrument in writing, the said Keaka, deceased, bequeathed all her real estate as well as personal property to all her heirs in common with all the rights and privileges belonging thereto,

and the said defendant Paakuku was made a Quasi trustee of said Estate, to hold it only for the use and benefit of all the heirs of the said Keaka, deceased; but your orators and oratrixes submit to your Honor, whether the terms of said Instrument are not wholly
89 ineffectual to create a trust and whether the said defendant Paakuku is not a mere tenant in common with your orators and oratrixes. And your orators and oratrixes further show to your Honor that the said defendant Paakuku, regardless of the said Trust and without lawful authority and without the knowledge and consent of your orators and oratrixes on the 10th day of November 1869, Sold and conveyed to one John Ii, all those several tracts of Land described in award of Land Commission No. 3237, as Kaluapulu, Ili aini, Apana 1 at Kalihi, Oahu, consisting of 8 tracts, containing in all ninety two acres for the wholly inadequate consideration of Fifty Dollars, whereas in truth and in fact the said tracts of land were worth at the time, at least Two Thousand Dollars; a copy of which said deed of conveyance is herewith shown to the Court in exhibit marked "C" hereinafter referred to and made a part of this Bill of Complaint; That said Defendant Paakuku has collected the rents on the above described Real Estate from the time of the death of the said Keaka, up to the time of the making of the said deed of conveyance and has wholly failed to account to your orators and oratrixes for said rents or any part thereof or for any part of the purchase money of said tracts of land so sold and conveyed to the said John Ii, as aforesaid:

That the said defendant Paakuku, has cut, used and sold the trees, timber and firewood, growing and being on the said Ahupuaa of Kaonoulu, in the Island of Maui from the time of the death of the said Keaka, up to the time of the making of the lease of said Ahupuaa as hereinafter mentioned;

That the said defendant Paakuku, on the 11th day of November, 1869, made an indenture of lease to one Wong Ko, (pake) whom your orators and oratrixes pray may be a party defendant to this Bill of Complaint) for the term of five years from that date, in and to the said Ahupuaa of Kaonoulu, on the Island of Maui, in fraud of the rights of your orators and oratrixes and without their
90 Knowledge and consent, for the w-olly inadequate consideration of Sixty five dollars per year, a copy of which said Indenture of Lease is herewith shown to the Court in exhibit marked "F" and made a part of the Bill of Complaint: And your orators and oratrixes aver that the making and executing of the said Indenture of lease was in absolute disregard of their rights, and that the said Defendant J. Komoikehuehu was a party privy to the said fraudulent Lease; And your orators and oratrixes further show to your Honor upon information and belief that the said defendant Wong Ko is committing great waste and destruction upon the trees, timber, saplings and Firewood growing and being in and upon said Ahupuaa of Kaonoulu and is supplying the Waikapu and Wailuku Sugar Plantations and other persons with Firewood and that the proceeds of the cutting and felling of the trees and saplings and the supplies of firewood thus furnished, besides the waste and destruction, amounts

as Your orators and oratrixes are informed and believe to about four hundred Dollars per month: And Your orators and oratrixes aver that the said waste, destruction and damage are irreparable and tend to destroy the value of the Inheritance, and that the said Defendants Paakuku and Wong Ko are not able pecuniarily to respond in damages for such waste destruction and damage so committed on said Ahupuaa of Kaonoulu and that unless a court of equity intervenes to stay said Waste and destruction the said Ahupuaa will be denuded of its trees, timber, saplings and firewood, the value thereof irremediably impaired and your orators and oratrixes left without a remedy.

And your orators and oratrixes aver that if the said Quasi trust to the said Defendant Paakuku is not so ineffectually created as to be void, she has exceeded her powers and has been guilty of a breach of trust, by the denial of the rights of Your orators and ora-
91 trixes under the said instrument of Writing of the said Keaka, deceased, in the sale and conveyance of the tracts of land as aforesaid to the said John Ii and in the making and executing of the Indenture of Lease of the ahupuaa of Kaonoulu to the said defendant Wong Ko, as aforesaid, and in the cutting and felling of timber, trees and firewood as aforesaid and in the failure to account to Your orators and oratrixes as Coheirs of the said Keaka, deceased, for the rents, profits, and proceeds of the sale aforesaid, and in her acting in all matters relative to the said real estate in total disregard of the Knowledge and consent of Your Orators and oratrixes, and that by all of said wrongful and fraudulent acts she has rendered her trust absolutely void; And your orators and oratrixes further aver that the said Defendant Paakuku had no power to sell and convey any other right than her own, being one sixth of said tracts of land, And had no power to make an indenture of Lease except of the same proportion in the Ahupuaa of Koanoulu as aforesaid; And Your orators and oratrixes further aver that the said Deed of conveyance to the said tracts of land of Kaluapulu, Kalihi, Oahu, to the said John Ii, is void as to them, a fraud upon the rights of your orators and oratrixes, And for a consideration so wholly inadequate as to show fraud upon its face and that it was intended as a deed of Gift in fraud of their rights, and that the same should be regarded void, as far as their rights and interests are concerned; That the said John Ii departed this life in the year 1870 subsequent to the making of the said deed of conveyance, and that previous to his death, he made a last Will and Testament, dated the 28th day of April 1870 which was duly admitted to probate on the 7th day of July 1870 before the Honorable Alfred S. Hartwell First Associate Jus-
92 tice of the Supreme Court, Sitting in probate; that the said John Ii, deceased, left an infant daughter by the name of Airene Halau Ii, and by the terms of said Will A. F. Judd and the defendant J. Kamoikehuehu were appointed executors of said last Will and Testament and guardians of the person and property of the said infant Airine Halou Ii, and letters as such were issued to them on the 7th day of February 1871; that the said defendant J. Kamoikehuehu was the devisee under the last Will and Testament of the said John Ii, deceased, of the said Ili aina of Kaluapulu, Kalihi,

Oahu, as will be seen by reference to said Will, a copy of which is herewith presented to the court in Exhibit marked "G" and made a part of this Bill of Complaint; that afterwards, to wit: on the 12th day of January 1871, the said J. Kamoikehuehu, sold and conveyed to one A. Roderick (whom your orators and oratrixes pray may be made a party defendant to this Bill of Complaint) for the consideration of three hundred dollars, a portion of said Ili aina of Kaluapulu, consisting of Apana 7 containing 6 47/100 Acres and Apana 8, containing 26 Acres in all containing 32 47/100 Acres: A copy of which said deed of conveyance is herewith shown to the Court in exhibit marked "H" and made a part of this Bill of Complaint: And your orators and oratrixes aver that the said defendant J. Kamoikehuehu, was privy to the whole transaction, relative to the sale and conveyance by the defendant Paakuku to the said John Ii, deceased, of the said Ili aina of Kaluapulu and that he well knew that it was a fraud upon the rights of your orators and oratrixes, and that he was a party to the fraud; And your orators and oratrixes further show unto your Honor that since the death of the said Keaka, they have been and now are severally seized in fee, as well as the said

93 defendants Paakuku, Keoni Sniffen (k) Lilii Sniffen, Laike Sniffen, Samuel Sniffen, Noa Sniffen, k Miner Sniffen, (k) Keola Sniffen (k) and Namoomoo Sniffen (w) all being the lawful issue and heirs of Makanoinoi (w) and B. F. Sniffen, deceased, the seven last named being miners and represented by George E. Miner their guardian, who your orators and oratrixes pray may be made parties defendant to this Bill of Complaint, J. Komoikehuehu and A. Roderick (with the limitation of their rights as herein specified) of and in all the real estate which was of the said Keaka, deceased, in the undivided parts or shares as tenants in coparcenary as follows, to wit:—Your orators and oratrixes Kahoiwai (k) Palauolelo (k) and Kahoohuli (w) to one sixth each: the said defendant Paakuku to one sixth, except in the portion conveyed as aforesaid, and the said defendants J. Komoikehuehu and A. Roderick to one sixth part of the land of Kaluapulu so sold as aforesaid in proportion to their several interests therein: Your Orators and Oratrixes Keohokii (k) Moeikauhane (w) and Keiwilei (k) to one third of one sixth part each: Your orators and oratrixes Harriet (w) Elizabeth (w) Esther (w), and the defendants Keoni Sniffen (k) Lilii (w) Laike (k) Samuel (k) Noa (k) Miner (k) Keoli (k) and Namoomoo (w) children of Makanoinoi (w) and B. F. Sniffen, to the eleventh part of one sixth each: And your orators and oratrixes further show unto Your Honor that they have frequently applied unto and requested the said Defendants Paakuku Keoni Sniffen (k) George E. Miner, the guardian of the minors aforesaid J. Komoikehuehu and A. Roderick to join and concur with your orators and oratrixes in making a fair and just partition of the said real estate between them, in order that their respective shares and proportions thereof might be allotted, held, and enjoyed in severalty;

94 And your orators and oratrixes well hoped that the said defendants Paakuku Keoni Sniffen (k) George E. Miner, guardian aforesaid, J. Komoikehuehu and A. Roderick would

have complied with such their reasonable requests, as in justice and in equity they ought to have done. But so it is may it please your Honor, that the said defendants Paakuku, Keoni Sniffen (k) George E. Miner as guardian as aforesaid, J. Komoikehuehu and A. Roderick, colluding and confederating with each other and the said defendant Wong Ko, refuse to comply with such requests and absolutely refuse to join or concur with your orators and oratrixes in a just and fair partition of the said real estate; which your orators and oratrixes aver would tend greatly to their advantage as well as to the advantage of the said defendants; all of which actions and doings of the said defendants Paakuku, Keoni Sniffen (k) and George E. Miner as guardian aforesaid, J. Komoikehuehu, A. Roderick and Wong Ko are contrary to equity and good conscience, and tend to the manifest injury and wrong of your orators and *and* oratrixes in the premises;—In consideration whereof and forasmuch as your orators and oratrixes can only have adequate relief in the premises in a Court of Equity where matters of this nature are properly cognizable. To the end therefore that the said defendants Paakuku, Keoni Sniffen (k) George E. Miner as guardian as aforesaid, J. Komoikehuehu, A. Rodireck and Wong Ko, and their confederates when discovered, may upon their several and corporal Oaths, to the best and utmost of their several knowledge, remembrance, information and belief,—full, true, direct, and perfect answer make to all the matters aforesaid, as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto.—May it please your Honor to grant unto your orators and oratrixes His Majesty's most gracious Writ of Summons commanding them on a certain day to appear before your Honor in
95 this Honorable Court, then and there upon their several corporal oaths full, true, direct, and perfect answer make to all and singular the premises, and further to stand, perform and abide such further order, direction and decree therein as your Honor shall seem meet.

And that the said defendant Paakuku may be compelled to make a full, true, and accurate account of all the Rents and Moneys she has received in any manner arising and coming from the said real estate hereinafter described in the Exhibits hereto annexed which was of the said Keaka, deceased, from the time of the death of the said Keaka up to the time of filing this Bill of Complaint and to make a full, true, and accurate statement of all the receipts and disbursements in any manner arising out of or connected with the said real estate.

And may it please your Honor to grant unto your orators and oratrixes, His Majesty's most gracious Writ of Injunction, issuing out of and under the seal of this Honorable Court to be directed unto the said defendant Wong Ko, to restrain him his servants workmen and agents from committing waste, spoil, or destruction on the said Ahupuaa of Kaonoulu, in the District of Kula in the Island of Maui and from cutting down any timber or other trees or saplings growing upon said real estate, and also to restrain him, his servants, workmen, and agents from hauling or transporting any timber, firewood logs or

trees on said Ahupuaa of Kaonoulu, or from selling or otherwise disposing of the same until the further order of this Honorable Court herein.

And that a fair and just partition be made of said real estate in the several parts or shares hereinbefore designated, and that a commission of partition may issue for that purpose and that the
96 particular Portions thereof which shall be allotted to your Orators and oratrixes may be duly conveyed to the several use of them and their, heirs forever free from all incumbrances and that all proper parties may join in such conveyance, Your orators and oratrixes hereby offering thereupon to convey all their several rights and interests in the other portions of said real estate as this Honorable Court shall direct;—And if after the report of the Commission as aforesaid, a fair, just and advantageous partition cannot be made for the benefit of all parties interested therein, that then this Honorable Court will be pleased to make an order for the sale of all said real estate at Public Auction, and that the proceeds of said sale shall be divided fairly and justly, according to the rights and shares of all the several parties herein.

And your orators and oratrixes further pray that on a final hearing herein the said deed of conveyance made and executed by the said defendant Paakuku to John Ii, deceased, and the said Indenture of Lease to the said Wong Ko, be decreed to be cancelled so far as the respective shares of your orators and oratrixes are concerned, And that after partition of the said real estate as aforesaid the said injunction against the said Wong Ko be made perpetual, as far as the said respective shares of your orators and oratrixes are concerned, and that your Honor will grant unto your orators and oratrixes such other and further relief as justice may require and equity and good conscience may demand,—

And so as in duty bound your orators and oratrixes will ever pray &c.

97 Dated Honolulu November 3d 1871.

KAHOIWAI (*k*), PALAUOLELO (*k*), KAHOOHULI (*w*), and KANAINA (*k*), *Her Husband;* KEALOPELAPELA (*w*), KEOHOKII (*k*), MOEIKAUHANE (*w*), and GEORGE CLARK, *Her Husband;* KEIWILEI (*k*), HARRIET SNIFFEN HAPAI and AKAU HAPAI, *Her Husband;* ELIZABETH SNIFFEN LILOI, and LILOI, *Her Husband;* ESTHER SNIFFEN WILSON and WILLIAM WILSON, *Her Husband, Complainants,*

By Their Solicitor, R. H. STANLEY.
W. C. JONES,
Of Counsel.

98 ISLAND OF OAHU,
Honolulu, ss:

Kahoiwai (k) One of the above named complainants for himself and for and on behalf of his Co-Complainants being duly sworn on oath doth depose and say that he has heard read and has had interpreted to him the foregoing Bill of complaint and Knows the contents thereof and that the same is true of his own Knowledge except

as to those matters which are therein stated to be on information and belief and that as to those matters he believes it to be true.

KAHOI WAI.

Subscribed and sworn to before me this 3rd day of November A. D. 1871.

JNO. E. BARNARD,
Deputy Clerk Supreme Court.

99 ISLAND OF OAHU,
Honolulu, ss:

Henry L. Sheldon being duly sworn doth depose and say that he is well versed in the Hawaiian language and that he truly and faithfully interpreted the foregoing complaint and the accompanying Exhibits in the Hawaiian language to the said Kahoiwai (k) before the said verification was signed and sworn to by the said complainant.

H. L. SHELDON.

Subscribed and sworn to before me this 3d day of November A. D. 1871.

JNO. E. BARNARD,
Deputy Clerk Supreme Court.

100 EXHIBIT "A."

Kope.

Palapala Hooko.

Ua ae aku i keia la ka poe hoona kumu kuleana aina ia H. Hewahewa nona ke kuleana Helu 3237, he kuleana kona malalo iho o ke Ano Alodio, a e hiki no ia ia ke hoololi no ke Kuleana Alodio mamuli o ke kanawai, aia i kona manao, a i ole ia, e loaa ia ia ke kuleana no na makahiki ke kanakolu, aia i kona manao.

O keia palapala ke hoomaopopo i kona kuleana malalo iho o ke ano Alodio i ka aina ana i hoopii mai ai o Kaonoulu he Ahupuaa ma Kula ma ka mokupuni o Maui kehookaaia na mea lilo no ka hana ana no no dala he $5 (Elima Dala).

A i ole e hookaaia ua mau dala la; aole e lilo keia palapala i kuleana maopopo ia ia. Ua hookoia keia kuleana mamuli o ke kanawai hou i hooholoia ma ka la 19 o June M. H. 1852. Aka, koe nae na kuleana o na kanaka maloko.

Ma ke kauoha ana mai a na Luna Hoona Kumu Kuleana aina. Halehoona, Honolulu, Oahu, 7th o Maraki, 1854.

J. KEKAULAHAO,
Kakauolelo o na Luna.

Loaa mai ia'u na dala e like me ka olelo maluna.
Keena Hoona, Honolulu, 7th o Maraki 1854.
(Signed) S. H. SMITH.

Ua loaa mai $1.25 dala no ke Kope.

D. KALAKAUA,
Kak 2 *K. K.*

101 EXHIBIT "B."

Kope.

Palapala Hooko.

Ua ae aku i keia la ka poe hoona kumu kuleana aina ia H. Hewahewa nona ke kuleana Helu 3237, he kuleana kona malalo iho o ke Ano Alodio, a e hiki no ia ia ke hooloili no ke Kuleana Alodio mamuli o ke Kanawai, aia i kona manao, a e ole ia e loaa ia ia ke kuleana no na makahiki ke kanakolu, aia i kona manao.

O keia palapala ke hoomaopo i kona kuleana mamalo iho o ke Ano Alodio i ka aina ana i hoopii mai ai o Kaluapulu he Ili aina Ap 1 ma Kalihi ma ka Mokopuni o Oahu. Ke hookaaia na mea lilo no ka hana ana no na dala he $5 (Elima dala).

A i ole e hookaaia ua mau dala la, aole e lilo keia palapala i kuleana maopopo ia ia. Ua hookoia ke ia kuleana mamuli o ke kanawai hou i hooholoia ma ka la 19 o Iune M. H. 1852. Aka, koe nae na Kuleana o na kanaka maloko.

Ma ke kauoha ana mai ana Luna Hoona Kumu Kuleana aina. Halehoona, Honolulu, Oahu, 7th o Maraki 1854.

J. KEKAULAHAO,
Kakauolelo o na Luna.

Loaa mai ia'u na dala e like me ka olelo maluna.
Keena Hoona, Honolulu 7th o Mariki 1854.
(Signed) I. H. SMITH.

Ua loaa mai he $1.25 no ke kope.

D. KALAKAUA,
Kak 2 K. K.

102 EXHIBIT C.

(Stamp.)

He palapala hoolilo loa i ka waiwai paa keia i hanaia i keia la Umi o Novemaba makahiki hookahi tausani ewalu haneri kanaono kumamaiwa—mawaena o Paakuku (w) no Kula Mokupuni o Maui ma ka aoao mua—ame Ioane Ii no Honolulu Mokupuni o Oahu ma ka aoao elua—Ke hoike nei o o Paakuku (w) no na Dala he Kanalima i loaa mai i loko o ko'u lima mai ia Ioane Ii i oleloia maluna—Nolaila—ua ae ia hooholoia kuaiia a ma keia palapala—ke hana nei me ka ae aku, kuai lilo hoolilo loa a me ka haalele loa i ko'u kuleana ma ka aina i oleloia malalo nei no Ioane Ii a me kona mau hooilina hooko kauoha na hooponopono waiwai hooilina a me na hope a no ka manawa pau ole—Eia na palena o ka aina au e hoolilo nei ma keia palapala ewaiho la ma Kalihi Mokupuni o Oahu i kapa ia ka Ili aina o Kaluapulu a penei na palena—

Apana 1. Ka Loko o Pahauiki me ke Kula e pili ana—E hoomaka ma ke kihi Akau ma ka pohaku i hoailona ia X e hele ana

Hem 18 Hik i 9.00 k'h ma ka palena Kula o Mokauea malaila aku Hem 5° Kom i 14.00 kh ma ka palena o Mokauea malaila aku Hem 86½° Kom i 3.28 kh malaila aku Ak 81° Kom i 8.80 kh ma ka palena Loko o Ananoho—malaila aku Hem 45° Kom i 11.30 kh ma ka palena Kula o Ananoho maliala aku Hem 18° Kom i 0.62 kh malaila aku Hem 45° Kom i 0.90 kh maluna o Kuapa o Pahauiki malaila aku Hem 70° Kom 1.30 kh maluna o Kuapa malaila aku kohomana i 0.50 kh. malaila aku Ak 63° Kom i 2.00 kh malaila aku Ak 45° Kom i 4 82 Kh maluna o kuapa o Pahauiki malaila aku Ak 37½° Kom i 1.10 kh malaila aku Ak 27° Kom i 2.10 kh malaila aku Ak. 11° Kom i 1.00 kh malaila aku Ak 11° Hik i 0.96 kh malaila aku Ak 26° Kom i 2.70 Kh ma ke kuapa i Pahauiki malaila aku Ak 3° Kom i 1.18 kh malaila aku Ak 70° Hik i 1.13 kh malaila aku Hem 69° Hik i 0 35 kh malaila aku Ak 70° Hik i 2.88
103 kh ma ka palena Loko o Pahaunui malaila aku Ak 80° Hik i 2.25 kh malaila aku Ak 88° Hik i 5.79 kh ma ka palena Kula o Pahaunui malalia aku Ak 51° Hik i 11.00 kh malaila aku Ak 45° Hik i 12.80 kh ma Kula o Pahaunui—a hiki i ka hoomaka ana. He 42 Eka 1½ kh huinaha.

Apana 2. O Kaeiole he Kula ma ka Loko—

E hoomaka ana ma ke kihi Akau e hele ana Hem 32° Kom i 6.50 kh ma ka palena pa aina o Mr. Adams malaila aku—Hem 63° Kom i 13.16 kh ma ka palena Kula o Apili—malaila aku Hem 37½° Kom i 0.74 kh ma ka palena Loko o Haunapo—malaila aku Hem 26½° Hik i 3.36 kh ma ka palena Loko o Haunapo malaila aku Ak 58° Hik i 2.43 kh ma ka palena o Haunapo malaila aku Hem 78° Hik i 0.96 kh malaila aku Ak 63° Hik i 14.40 kh ma ka palena Kula o Niau malaila aku Ak 12° Kom i 7.00 kh a hiki i kahi i hoomaka ai 8 Eka 1/42/100 kh huinaha

Apana 3. He Mooaina i loko o Kaluapulu

E hoomaka ana ma ke kihi homohana e hele ana Ak 52° Hik i 2 10 kh ma ka palena o ka Mookukahi malaila aku Hem 40° Hik i 5.30 kh ma ka palena aina no Kama malaila aku Hem 41° Hik i 0.20 kh malaila aku Hem 48° Hik i 2 80 kh ma ka palena no Kama malaila aku Hem 43° Kom i 1.95 kh ma Kahawai—malaila aku Ak 48° Kom i 8.00 kh ma ka palena o Kekualiilii a hiki i kahi i hoomaka ana, 1 Eka 5-40/100 kh huinaha

Apana 4. He mooaina i loko o Kaluapulu

E hoomaka ana ma ke kihi kohohana e hele ana Hem 38° Hik i 8.00 kh ma ka palena no Kama malaila aku Ak 49° Hik i 2.20 kh ma ka palena o Apili malaila aku Ak 41° Kom i 4.27 kh ma ka palena o Kaliawa—malaila aku Hem 50° Kom i 0.33 kh malaila aku Ak 43° Kom i 3.63 kh ma ka palena o Kukahi malaila aku Hem 54° Kom i 1.33 kh a hiki i ka hoomaka ana. 1 Eka 4-56/100 kh huinaha

Apana 5. He Mooaina iloko o Kaluapulu

E hoomaka ana ma ke kihi Hema e hele ana. Ak 48° Kom i 8.42 kh ma ka palena no Kama malaila aku Ak 50° Hik i
104 2.80 kh ma ka palena o Kaluaopalena—malaila aku Hem 44° Hik i 8.30 kh ma ka palena o Kaliawa malaila aku Hem

48° Kom i 2.40 kh ma ka palena o Kaliawa a hiki i ka hoomaka ana He 2 Eka 1 kh huinaha

Apana 6. He mahele o Kaluapulu. E hoomaka ana ma ke kihi Akau e hele ana Hem 60° Kom i 2.50 kh ma ka palena o ka Ili Kaleapaa malaila aku Hem 28° Kom i 3.22 kh ma ka palena o Kaleapaa malaila aku Hem 45° Hik i 8.00 kh ma ka palena aina no Kama Ak 40° Hik i 270 kh ma ka palena no Kawao malaila aku Ak 18° Hik i 0.80 kh ma Kahawai malaila aku Ak 49° Kom i 3.00 kh ma ka palena o Mokauea malaila aku Ak 50° Hik i 0.70 kh malaila aku Ak 27° Kom i 4.52 ma ka palena o Mokauea a hiki i ka hoomaka ana 3 Eka 60-80/100 kh

Apana 7. Ke Kula o Kaahaloa Kaluapulu

E hoomaka ana ma ke kihi Hikina e hele ana Ak 35° Kom i 2.80 kh ma ka palena no Alika malaila aku Hem 60° Kom i 6.70 kh ma ka palena o Alika malaila aku Hem 40° Kom i 2.20 kh ma Kahawai malaila aku Hem 19° Kom i 9.00 kh ma Kahawai malaila aku Hem 9° Hik i 150 kh malaila aku Ak 46° Hik i 17 00 kh ma ka palena o Alika a hiki i ka hoomaka ana. 6 Eka 9-47/100 ku huinaha

Apana 8. 6 Laelae he Kula iloko o Kaluapulu

E hoomaka ana ma ke kihi Hema ma Kahawai Ak 26° Kom i 28 00 kh ma ka palena Kahawai, malaila aku 55° Kom i 24.10 kh ma ka palena o Kalei malaila aku Hem 2½° Kom i 18.30 kh ma Kuahiwi i ka palena o Kahauiki malaila aku Hem 78° Hik i 16.65 kh a hiki i ka hoomaka ana He 26 Eka ma na Apana a pau he 92 Eka—

E lilo pu no hoi me na hale maluna a me na mea a pau a pili paa ana ma ka aina a me na mea a pau maluna iho o na koena waiwai na hoolimalima na waiwai loaa a me na pomaikai e pili ana a me na pono a me na loaa a pau loa o Paakuku i loko oia mau apana aina i olelo ia maluna ma kona mau aoao a pau no ka manawa pau ole no Ioane Ii.

105 I hoike no keia, ke kakau nei au ka mea nona ka aoao mua me kuu lima ame kuu sila i ka la a me ka makahiki i oleloia maluna.

her
PAAKUKU x O
mark

Silaia a haawi ia me ka ike maka o
H. L. SHELDON.
WM. H. DAVIS.

REGISTER OFFICE,
Oahu, ss:

On this 10th day of November A. D. 1869 personally appeared before me Paakuku party to the foregoing instrument who acknowledged that she had executed the same for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Recorded and Compared this 10th day of November A. D. 1869 at 1 o'clock P. M.

THOMAS BROWN,
Registrar of Conveyances.

REGISTER OFFICE, HONOLULU,
October 27th, 1871.

I hereby certify that the foregoing is a true and correct Copy of an Instrument of record in this Office in Liber 29 on pages 102 & 103 & 104 & 105 of Miscellaneous Records.

[SEAL.] THOMAS BROWN,
Registrar of Conveyances.

106 EXHIBIT "D."

Kope.

Palapala Hooko.

Ua ae aku i keia la ka poe hoona Kumu Kuleana aina ia Hewahewa nona ke Kuleana Helu 3237. Ke Kuleana kona ma ke Ano Alodio Wailuku Maui

O keia palapala ke hoomaopopo o kona kuleana ma ke Ano Alodio i ka aina ana i hoopii ai a hoakaia ma ka palapala ana aina a E. Biley ma kona mau palena, Ke hookaaia na mea lilo no ka hana ana a loaa ka palapala hookaa no na dala he $5 (Elima dala)

A i ole e hookaaia ua mau dala la, aole e lilo keia palapala i Kuleana maopopo ia ia

Ma ke kauoha ana mai ona Luna Hoona Kumu Kuleana aina Hale Hoona Honolulu February 11th 1854.

J. KEKAULAHAO,
Kakauolelo o na Luna.

Loaa mai ia'u na dala e like me ka olelo maluna.
Keena Hoona. Ame ko ke kope $1.50. 1854.
Honolulu October 27th 1874.

D. KALAKAUA.

107 Helu 3237. Hewahewa.

Kepukakeeo. Wailuku Maui.

Apana 3. E hoomaka ma ke kihi Komohana a e holo

Ak 77°	Hi	98	Kaul	ma ka	Ihumai
" 78°	"	8.27	"	"	Lonohewa
" 7°	Ko	1.76	"	"	Konohiki
" 74¾°	Hi	2.17	"	"	"
" 20½°	Ko	4.51	"	"	"
He 59°	"	.66	"	"	"
" 75½°	"	.66	"	"	"
" 22°	Hi	.33	"	"	Ihumai
" 55¾°	Ko	4.59	"	"	"

" 66½°	"	1.05	"	"	Konohiki
" 64	"	.82	"	"	"
" 62¾°	"	1.50	"	"	"
" 12°	Hi	2.02	"	"	"
" 67¾°	Ko	1.09	"	"	"
" 10¼°	"	2.21	"	"	ka auwai a hiki

ma ke Kehi mua 4- 67/100 Eka.

108 EXHIBIT E.

Copy Will of Keaka.

No ka lokomaikai ana mai o ka Moi Kamehameha III ke Alii a ke Akua i hoonoho ai ma ka Nohoulii. Ana i haawi loko maikai mai ai i kona mau kanaka ponoi, i aina hooilina no lakou oia hoi na Konohiki.

Owau o Keaka ka mea nona ka inoa i kakauia malalo. Ke hooili aku nei au i ka Aina o Koanaulu, mai ka uka a hala i ke kai, no kuu mau Hooilina mahope aku, Penei;

E noho no o Paakuku maluna o ka aina apau o Koanaulu ia ia ka malama, a me ka hooponopono ana maluna o ka aina e like me ko'u noho ana; ma ua aina'la i oleloia ae nei. O kona mau kaikunane hoi, a me na kaikaina ona e noho no lakou maluna o ka aina malalo mai nae o Paakuku, e like no me ko lakou noho ana malalo mai o'u pela no lakou. Aole hiki i kekahi o lakou ke kue. a hoole i ka mea a'u i haawi ai i ka Hooilina, a me na pono apau o luna o ke Aina, a loaa akuka ain e ka mea a'u i hoonoho ai i Luna Hooponopono ma ko'u wahi. E noho mai no kona mau pokii malalo mai ona me ka maikai, aole me ka manao ino ana i mea e kue ai ko lakou noho ana ma ua aina la.

Aole lilo ka hooponopono ana maluna o ka aina o Koanaula ia H. B. Sniffen, ke hoole aku nei au i kona hooponopono ana ma ua aina'la e noho noia ma kona wahi o maluai malalo mai nae o kana wahine.

I mea e pono loa ai ko lakou noho ana, e noho no kela mea, keia mea o lakou ma ua aina'la, a e mahiai nohoi e like me ko lakou makemake. O ka aina o Kalihi i Oahu, a me na pono apau maluna o ia aina o makou, e lilo no ia Paakuku a me kona mau hoahanau ka malama, a me ka hooponopono maluna oia aina.

No na Lio—Ona lio elua o Punalua ame Maunaihoolako, e lilo noia ia mau lio ia Paakuku a me kona mau hoahanau, a me
109 na Hooilina o lakou mahope aku, ke lawa na lio ia lakou ma ka haawi pakahi ana, o na keiki hanau mua, e holo pu no nae lakou i keia mau lio, a hiki i ka wa e lawa ai lakou i na lio pakahi

O ka waiwai apau i loaa mai no keia mau aina elua, ame na Poalima, maluna, oia mau aina, e pili no ia mau pono ia Paakuku a me kona mau hoahanau, a me ko lakou mau Hooilina mahope aku.

A no ka oiaio o keia mau olelo a'u nolaila ke kakau nei au i

ko'u inoa, i keia la 12 o Feberuari i ka Makahiki o ko kakou Haku, hookahi tausani ewalu haneri a me kanalima. Ma Kelepolepo, Mokupuni o Maui, ko Hawaii Pae Aina.

NA KEAKA X [L. S.]

Ike maka o ke kakau ana, na Hoike
KIMO HUMPHREYS PILA KAKAPA
PAELE IKEMAKA

Ua hele mai o Keaki muai o'u i ka la 13 o Febuali 1850 e hooia io mai ana i keia palapala nana pono i na olalo a pau oloko e haawi ana i kona hooilina no Paakuku.

(Signed) J. H. NAPELA,
Lunakanawai Apana 3.

HAWAIIAN ISLANDS,
Oahu, ss:

Be it remembered that on this Fifteenth day of December, A. D. 1868, the foregoing written Instrument was duly proved before me in the Supreme Court of the Hawaiian Islands, as and for the last Will and Testament of Keaka (w) of Kula, Island of Maui.

And Certificate of the Probate of same was directed to be delivered to the Petitioner Paakuku (w) and J. Komoikehuehu, Administrators with the Will annexed.

In testimony whereof I have hereunto set my hand and caused to be affixed the Seal of the Supreme Court the day and year last above written.

[L. S.] (Signed) JAMES W. AUSTIN,
Justice of the Supreme Court.

110 By the gracious favor of the King Kamehameha III whom God appointed to reign, his generous gift to his own people of land for them to bequeath, that is to say the Konohikis—

I, Keaka, the undersigned do hereby bequeath the land of Koanaulu, from the mountain to the sea, unto my heirs hereafter as follows—

Paakuku shall remain upon the land of Koanoulu and have the charge of it and the regulation of it as I have done on the said land—Her brother and sisters are to live on the land under Paakuku as they have lived under me. No one of them shall oppose or deny the one I have appointed as the heir and everything pertaining to the land is to be had by the consent of the one I have appointed to have charge in my place. Let the younger brothers and sisters live under her pleasantly without evil thoughts which shall obstruct their living on that land

B. F. Sniffen shall not have the regulation of the land of Koanaoulu, I hereby forbid him acting as agent on said land let him remain on his place and plant but under his wife. In order that they may live comfortably on said land let each cultivate as they may choose. The land at Kalihi, Oahu and the appurtenances on that land of ours, it shall be for Paakuku and her brothers and sisters to have charge of and to regulate

The Horses.—The two Horses "Punalua" and Manaihoolako, they shall be Paakuku's and her brothers ans sisters and their heirs after them if the increase shall be sufficient to give them one horse apiece, but they shall equally ride the Horses until such time as there shall be one apiece.

All the income of these two lands and the Konohiki days on these lands shall go to Paakuku and her brothers and sisters and their heirs after them

In Witness of the foregoing I hereby affix my name this 12th day of February A. D. 1850 at Kalepolepo Island of Maui
111 Hawaiian Islands.

her
NA KEAKA X
mark

Witnesses to signature:

KIMO HUMPHREYS
PELA KEKAPA
PALELA KEKAPA

Personally appeared before me Keaka this 13th day of February, 1850, and acknowledged that all the words in this paper were her own making Paakuku her heir.

J. H. NAPELA,
Dist. Justice.

112 EXHIBIT F.

(Stamp.)

He palapala hoolimalima aina keia i hana ia i keia la Umi kumamakahi o Novemaba makahiki hookahi tausani ewalu haneri kanaono kumamaiwa mawaena o Paakuku (w) no Kula Mokupuni o Maui ma ka aoao mua a me Wong Ko (Pake) no Wailuku Maui ka mea ma ka aoao elua—O ka mea nona ka aoao mua i olelo ia maluna ke hoolimalima aku nei au i ko'u aina o Koanaulu e waiho ana ma Kula Maui e lilo ia Wong Ko (Pake) ka mea ma ka aoao elua i olelo ia maluna no na makahiki Elima no na Dala he Kanaono kumamalima no ka makahiki hookahi a penei e uku ai e uku ia ka makahiki hookahi mua ma ka la mua o Ianuari o ka makahiki hookahi kausani ewalu haneri me kanahiku a o na makahiki aku mahope e uku ia ma kela a me keia hapalua makahiki a pela e uku ai a pau na makahiki i olelo ia ma keia palapala hoolimalima a e lilo no hoi na mea a pau maluna o ka aina, i hoolimalima ia koe nae ka wahie e pili no ia i ka aoao mua a me ka aina mawaena kona i hoopuni ia i ka pa i loko no o Koanaulu a penei na palena o ka aina o Sniffen ma ka aoao ma Ulupalakua o ke Kuahiwi o Haleakala mauka a muka o ka Loko o Kalepolepo i pili ana i kahakai makai o ka aina o Sniffen o Naalae ma ka aoao ma Makawao a ma kei hoolimalima ana ua koe no kahi au i hoolimalima ia John Halstead—aka o na wahi a pau loa mawaho ae o ka Pa Aina i hoikeia maluna ua lilo ia mau wahi a pau i ka aoao elua A ke ae nei ka aoao mua ina ia Maloo a wai ole kahi o ka aoao elua i hooli-

malima ai o ke Kula alaila ua hiki no ke hookomo ia na holoholona o ka aoao elua maloko o ka pa e koe nei i ka aoao mua ma kahi e inu a i kona mau holoholona i ka wai me ka malama pono nae o ka aoao elua apau ka inu ana o ua holoholona i ka wai hoihoi koke ka aoao elua ia lakou mawaho o kahi i hoolimalima ia iaia me ka hakalia ole. O ka auhau o ka aina ua pili noia i ka aoao mua oia ka auhau aupuni a eia keia mea i ae like ia ua hiki no i ka
113 holoholona, o ka aoao mua ke hele maluna o ka aina i hoolimalima ia i ka aoao elua me ke keakea ole ia oia hoi kona mau holoholona ponoi—Ke ae like nei na aoao elua ina pau na makahiki i oleloia ma ka palapala a ina makemake hou ka aoao elua i keia aina no na makahiki e like me kona makemake aole nae e oi mamua o na makahiki Elima hou ua pono no i ka pau ana o keia hoolimalima e hoihoi ia mai ka aina me ka maikai a ma keia hoolimalima i hoike ia maluna ua apono maua a e hooko pono hoi ko maua mau hooilina a me ko maua mau hooponopono waiwai hooilina a me ko maua mau hooko kauoha ina mea apâu i hai ia maluna—No ka oiaio o keia ke kakau nei maua i ko maua mau inoa a hoopili mai i ko maua Sila i keia la i hai ia maluna.

kona

PAAKUKU X

kaha

WONG KO O

Ike maka:
J. KOMO
WONG KWAI

REGISTER OFFICE, *Oahu, ss:*

On this 11th day of November, A. D. 1869 personally appeared before me Paakuku and Wong Ko and severally acknowledge that they had executed the foregoing Instrument for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Recorded and Compared this 11th day of November A. D. 1869 at 2 o'clock P. M.

THOMAS BROWN,
Registrar of Conveyances.

114 Register Office, Honolulu.

October 28th, 1871.

I hereby certify that the foregoing is a true and correct copy of an Instrument on record in this Office in Liber 29 on pages 202 & 203 & 204 of Miscellaneous Records.

THOMAS BROWN, [SEAL.]
Registrar of Conveyances.

Endorsement: Exhibit "F." Paakuku w to Wong Ko (Pake Lease.

9—120

115 EXHIBIT G.

Imua o ke Akua mana loa Amene.

Owau o Ioane Ii no ke Kulanakauhale o Honolulu, Mokopuni Oahu ko Hawaii Pae Aina, ua hana au, a ke hana nei i ka'u palapala Kauoha hooilina, i mea e hoike aku ai ma ke Akea, no ka mea, o ka'u Kauoha hope loa keia. A mahope o ka hookaa ana i ko'u mau aie a pau, E ili aku no kuu mau waiwai paa a pau loa a me ko'u mau waiwai lewa a pau loa i kuu mau hooilina i hoike ia malalo nei Penei:

Akahi: O Airine Haalou Ii kuu kaikamahine ponoi ka hooilina mua Penei;

O ka aina o Halaape Kohala Mokupuni o Hawaii

" " " " Waipunaulaiki Kona Hema "

Aina hooilina o Heneriaka Kalemakalii o Aleemai Hana Mokuuni o Maui

Elua Apana aina Kapunakea Lahaina "

Akahi Loi i loko o Uhao "

" Ahupuaa o Keopuka paiole i Molokai ma ka Mokupuni, Oahu.

Hookahi Ili aina i loko o Makiki o Kaneiolole ke kumu ia o ka wai a hiki i kai o Pawao.

Akahi Pa hale i Kamakela Honolulu

" Kuleana i Waiakemi "

" " Paakiko Maemae "

" Ahupuaa o Waipio i Ewa a me

" Kuleana no Kekela (w) i make a ua lilo ia'u aia ma Kee Haena Mokupuni o Kauai a me ka hapalua o na waiwai Lewa apau.

Elua: O kuu wahine mare o Maraea Ii ka lua o ka hooilina. Akahi aina ma Hilo oia ke Kuleana o Lumaina i lilo ia'u ma ke kuai, Hookahi Ili Aina o Makana i Koolauloa Oahu, ame
116 ka hapalua o na waiwai lewa a pau. A ina marse oia i ke kane hoi hou no keia mau aina no kuu kaikamahine, aole hiki iaia ke hooili aku ia hai.

Ekolu—O Kuu kaikaina o J. Komoikehuehu ke kahu o na hooilina, Aka Ili aina o Homaikaia i loko o Waipio, me akahi aina Kuai o ka hapalua o Auiole i Waikele, Ewa, Oahu, a me akahi Ili aina o Kaluapule Kalihi, Oahu, oia kona mau aina a'u e hooili nei.

Eha—O kou kuleana i loko o ka aina o G. Naaihelu kuu kaikaina i make e pili no ia i kana wahine ia Kamealani.

Elima—O kuu aina kuai oia ka Pa i Pawaa e pili la no me ka Pa o Kauka ma ka aoao ma Waikiki o ke alanui aupuni e holo ea i Waikiki kai no A. F. Judd ia Pa oia kona aina a'u e hooili nei.

Ma keia palapala kauoha a'u ua hoonoho aku au, a ke hoonoho nei ia J. Komoikehuehu A. F. Judd, o laua Elua na hooko kauoha o'u a mau Luna Hooponopono waiwai, a he mau kahu no ke kino, a me ka waiwai o kuu kaikamahine, ka hooilina mua i hoike ia ma keia palapala, o na loaa a pau o na aina i hoolimalima ia, a me na

ioaa e ae maluna o na aina a pau o kuu kaikamahine, me laua wale no ka malama a hiki i kona wa e kanaka makua ai, a hanau paha kana mau keiki, o laua no na hooko kauoha i ka wa e ola ana kuu kaikamahine, a i kana mau keiki aku, E like me kuu make-make i hoike ia ma keia palapala, a e loaa no ia laua ka uku Elike me ke kanawai

A na o'u mau hooko kauoha e hoonoho i kuu kaikamahine ma kahi kupono e ao ia i ka naauao ma na elelo Elua, a e alakai ia ka'u keiki ma ke alanui o ka pono, a o na hua mua e loaa mai ana mai ka aina mai, o ke kaikamahine oia na Dala loaa mai, e lawe ia he Umi Keneta no kela keia dala apau a he dala hoolaa ia no ko ke Akua Aupuni; E like me ka'u mau hana ana, a e hooko i keia na hooko kauoha o'u.

117 Eia hoi ina make kuu kaikamahine, a ua hanau keiki oia, alaile e ili aku no ka waiwai i kana mau keiki, a ina ua make me ke keiki ole, alaila e ili aku no i kona makuahine ponoi a ino e make ia e ili hou aku i kuu kaikaina ia J. Komoikehukehu.

I hoike no ka oiaio o keia ke kakau nei au i kuu inoa me kuu lima iho, a hoo hoopili mai i ko'u sila i keia la 28 Aperila M. H. 1870

(Signed) IOANE II Kona x Kaha.

Mamuli o ke noi ana mai o ka mea Hanohano Ioane Ii, ia makou i mau hoike no kona kakauinoa ana i kana palapala kauoha hope loa, a ua kakau makou i ko makou mau inoa i mua ona.

D. B. MAHOE no Honolulu
D. KAHANU no Honolulu
W. L. MOEHONUA " "

118 EXHIBIT H.

Original stamped.

E ike auanei na kanaka a pau ma keia palapala owau o J. Komoikehuehu no Honolulu Mokupuni Oahu ko Hawaii Pae Aina. No ka loaa ana mai o na Dala maikai Ekolu Haneri i loko o ko'u lima mai ia A. Roderick mai e like me ka hai ana a keia palapala. Nolaila ua haawi ua kuai aku a ua hoolilo a ma keia palapala ke hoolilo loa aku nei au i kuu mau apana aina Kula o Laelae a me Kaahaloa i loko o Kaluapulu he Ili aina i Kalihi, Oahu, no A. Roderick a me kona mau hooilina a me kona mau waihona no ka manawa pau ole.

Eia na palena o ua apana aina Kula au e hoolilo nei ma keia palapala e waiho la ma Kaluapulu Kalihi Oahu a penei na palena

Apana VII Ke Kula o Kaahaloa "E hoomaka ana ma ke kihi Hikina e hele ana. Ak 33° Kom i 2 80 kh ma ka palena no Alika malaila aku Hem 60° Kom i 6,70 hk ma ka palena o Alika, malaila aku Hem 40° Kom i 2 20 kh ma Kahawai malaila aku Hem 19° Kom i 9,00 kh ma Kahawai malaila aku Mem 9° Hik i 1 50 kh

malaila aku Ak 40° Hik i 17.00 kh ma ka palena o Alika a hiki i ka hoomaka ana 6 Eka 9 47/100 kh huinaha" Apana VIII o Laelae he Kula i loko o Kaluapulu "E hoomaka ana ma ke kihi Hema ma Kahawai. Ak 26° Kom 8.80 kh ma ka palena Kahawai malaila aku. Ak 55° Kom i 24.10 kh ma ka palena aina o Kalei malaila aku Hem 2½° Kom i 18.30 kh ma Kuahiwi i ka palena Kahauiki malaila aku Hem 78° Hik i 16.15 kh a hiki i ka hoomaka ana ma keia apana he 26 Eka."

O keia mau apana aina Kula au i kuai nei i hoike ia maluna no loko mai o ka Ili aina o Kaluapulu i Kalihi Oahu a Paakuku i kuai ai me Ioane Ii ma kala umi o Novemaba makahiki umi kumamawalu haneri me kanaono kumamaiwa a ua kope ia ma ka Buke 29 a ka Luna Kakau Kope o ke Aupuni. A o Ioane Ii i hai ia maluna ua make oia a owau kekahi o kona mau hooilina ma keia palapala kauoha i hooiaio ia i ka Aha Kiekie a o ka Ili aina i hai ia
119 maluna o ko'u aina hooilina ia mai ia Ioane Ii mai a no loko mai oia aina i lilo ia'u keia mau apana aina Kula Elua i hoike ia maluna au e hoolilo nei no A Roderick a me kona mau hooilina a me kona mau waihona no ka manawa pau ole—A ua lilo no hoi na mea apau maluna iho ame na mea e pili paa ana ma ka aina ma keia kuai ana—Owau o Kahikimua ka wahine mare a J. Komoikehukehu ka wahine nona ka inoa e kau pu ana ma keia palapala ke haalele nei a ke hoolilo nei au a kuai aku i ko'u kuleana hapakolu i loko o ka aina au e hoolilo nei a me kuu kane no A Roderick ame kona mau hooilina ame kona mau waihona no ka manawa pau ole

No ka oiaio ke kau nei maua i ko maua mau inoa me ko maua mau lima iho me na sila o maua i keia la Umi kumamawalu o Ianuari makahiki umu kumamawalu haneri kanahiku kumamakahi

J. KOMOIKEHUKEHU O
kona
KAHIKIMUA X O
kaha

REGISTER OFFICE, *Oahu, ss:*

On this 12th day of January A. D. 1871 personally appeared before me J. Komoikehukehu and Kahikimua his wife parties to the foregoing Instrument who severally acknowledged that they executed the same for the uses and purposes therein set forth. And the said Kahikimua on a private examination separate and apart from her husband declared that she executed the same of her own free will without compulsion fear or constraint from her said husband.

THOMAS BROWN,
Registrar of Conveyances.

Recorded and Compared this 12th day of January A. D. 1871 at 1 o'clock P. M.

THOMAS BROWN,
Registrar of Conveyances.

120 Register Office, Honolulu.

October 31, 1871.

I hereby certify that the foregoing is a true and correct copy of an Instrument on record in this Office in Liber 31 on pages 299 and 300 of Miscellaneous Records.

[SEAL.] THOMAS BROWN,
Registrar of Conveyances.

Endorsement: Supreme Court. In Equity. E. 165. Kahoiwai (k) & others vs. Paakuku (w) & others. Bill for Partition. Stanley & Jones, Solicitors for Complainants Nov. 6th. Rev'd. R. H. Stanley $25.00. Filed 3rd Nov'r 1871. Jno. E. Barnard, Deputy Clerk Sup. Court.

Service	$35.00	
7 Copies Summons	10.50	
1 Copy Injunction	5.00	
Travelling fees	14.50	Maui
" "	2.50	Oahu
	$67.50	

(Travelling Expenses paid $17.00.)

121 Stamp.

SUPREME COURT,
Hawaiian Islands:

To W. C. Parke, Esq., Marshal of the Hawaiian Islands, or his Deputy, Greeting:

You are commanded, by order of the Honorable A. S. Hartwell First Associate Justice of the Supreme Court, to summon Paakuku (w), Lilii Sniffen, Laike Sniffen, Samuel Sniffen, Noa Sniffen, Miner Sniffen, Keola Sniffen, Namoomoo Sniffen, by George E. Miner, their Guardian, Keoni Sniffen, Wong Ko, I. Komoikehuehu & A. Roderick, Defendants to be and appear before him, the aforesaid Justice at his Chambers in the Court House in the City of Honolulu, Island of Oahu, on Friday the first day of December next, at 10 o'clock a. m. to show cause why the prayer of Kahoiwai (k) et als. Complainants should not be granted, pursuant to the tenor of their bill of complaint hereto annexed, and that the defendants do make due answer upon oath to said complaint.

And have you then there this Writ, with full return of your proceedings thereon.

Witness, the Honorable A. S Hartwell, Justice of the Supreme Court, at Honolulu, this Sixth day of November A. D. 1871.

[SEAL.] WALTER R. SEAL, *Clerk.*

122 Served the foregoing summons with petition and order annexed on each of the within named defendants by delivering to each of them a true and certified copy of the same.

And furthermore I did deliver to Wong Ko a true and certified copy of the within injunction commanding him his workmen agents and servants to refrain from cutting down any timber or trees or saplings and commanding him the said Wong Ko to be and appear before the said First Associate Justice of the Supreme Court at the Court House in Honolulu on Friday on the first day of December A. D. 1871 to show cause why said injunction should not be made perpetual.

The said Wong Ko John Sniffen and George Miner were served by my Deputy Thomas W. Everett Deputy Sheriff of Maui on the 16th day of Nov. A. D. 1871.

The said Pakuku J. Komoikehuehu and A. Roderick were served by me on the 17th day of November A. D. 1871.

W. C. PARKE, *Marshall.*

123 Before the Honorable Alfred S. Hartwell. First Associate Justice of the Supreme Court and Vice Chancellor of the Hawaiian Islands.

KAHOIWAI (k), PALAUOLELO (k), KAHOOHULI (w), and KANAINA, Her Husband; Kealopelapela (w), Keohikii (k), Moeikahuhane (w), and George Clark, Her Husband; Kaiiwilei (k), Harriet Hapai, & Akau Hapai, Her Husband; Esther Wilson and William Wilson, Her Husband; Elizabeth Sniffen Liloi and Liloi, Her Husband, Complainants,

against

PAAKUKU (w), LILII SNIFFEN, LAIKI SNIFFEN, SAMUEL SNIFFEN, Noa Sniffen, Miner Sniffen, Keola Sniffen, and Namoomoo Sniffen, Minors, by George E. Miner, Their Legall- Appointed Guardian; Keoni Sniffen, Wong Ko, J. Komoikehu Keuhu, & A. Roderick, Defendants.

On reading and filing the Bill of Complaint for Partition, and also for and Injunction to restrain waste this day filed by Kahoiwai (k), Palauolelo (k), Kahoohuli (w), and Kanaina (k) her husband, Kealopelapela (w), Keohikii (k), Moeikahuhane (w) and George Clark her husband, Kaiiwilei (k) Harriet Hapai and Akau Hapai her husband, Esther Wilson and William Wilson her husband and Elizabeth Sniffen Liloi & Liloi her husband, Complainants against Paakuku (w) Lilii Sniffen, Laike Sniffen, Samuel Sniffen, Noa Sniffen, Miner Sniffen, Keola Sniffen and Namoomoo Sniffen, Infants by George E. Miner their legally appointed guardian, Keoni Sniffen, Wong Ko, J. Komoikehukehu and A. Rode-
124 rick, Respondents. It is hereby ordered that process in due form of law be issued to the said Paakuku (w), Keoni Sniffen, George E. Miner, Guardian of the persons and property of the Infant Respondents above mentioned, J. Komoikehuehu, Wong Ko and A. Roderick, to be and appear before me at my Chambers in the Court Room in the Court House at Honolulu on Friday the First day of December A. D. 1871 at 10 o'clock in the forenoon of that day, then and there to show cause if any they have why the

prayer of the said Bill of Complaint should not be granted, and that they make due answer upon oath to the matters and things in the said Bill set forth. And whereas it appears by the said

A.* Bill of Complaint that A the said* Wong Ko, one of the Defendants is committing great waste and destruction upon the trees, timber, saplings & firewood growing and being in and upon the Ahupuaa of Kaonoulu, in the District of Kula, Island of Maui, portion of the Real Estate described in said Bill of Complaint, and whereas it is averred that said waste, destruction & damage are irreparable and tend to destroy the value of the inheritance, and that the said Wong Ko is not able pecuniarily to respond in damages for such waste, destruction and damage so committed on said Ahupuaa of Kaonoulu as aforesaid.

It is further Ordered that His Majesty's most gracious Writ of Injunction, issue out of and under the Seal of the Supreme Court direc' d unto the said Defendant Wong Ko, enjoining and

B.* restr[illegible]ng him, his servants, workmen and agents B* from committ[illegible]g waste, spoil or destruction on the said Ahupuaa of Kaonoulu, in the District of Kula, Island of Maui, and from cutting down any timber or other trees or saplings growing upon said Real Estate and also to Restrain him, his servants, workmen and agents from hauling or transporting any timber, firewood, logs or trees on said Ahupuaa of Kaonoulu, or from selling or otherwise disposing of the same until the further Order of this
125 Honorable Court herein.

And further commanding the said Wong Ko to be and appear before this Honorable Court on the day and hour above named to show cause why said Injunction should not be made perpetual.

Witness my hand this Fourth day of November A. D. 1871.

ALFRED S. HARTWELL,
Justice of the Supreme Court.

Attest:
WALTER R. SEAL, *Clerk.*

Endorsement: E. 165. Supreme Court. In Equity. Kahoiwai (k) and others, vs. Paakuku (w) & others. Order for Process. Stanley & Jones, Solicitor- for Compl'ts. Filed 4 Nov. A. D. 1871. W. R. Seal, Clerk.

126 Supreme Court. In Equity.

KAHOIWAI & AL.
vs.
PAAKUKU.

Whereas the answer day set in said cause is Friday Dec. 1, A. D. 1871, this is to request His Honor the Chief Justice in my absence

[* In pencil in copy.]

from Honolulu on said day to decide whether longer time for filing answer if requested should be granted, and such other questions as may on that day be presented in said cause.

ALFRED S. HARTWELL,
Justice of the Supreme Court.

Honolulu, Nov. 24, 1871.

Endorsement: E. 165. Supreme Court. Kahoiwai et al. vs. Paakuku (w) & others. Request from Judge Hartwell to Chief Justice to hear case. Filed 24th Nov'r, 1871.

127 Supreme Court of the Hawaiian Islands. In Equity.

KAHOIWAI (k) et al.
vs.
PAAKUKU (w) et al.

Before the Honorable Elisha H. Allen, Chief Justice of the Supreme Court of the Hawaiian Islands and Chancellor of the Kingdom.

The answer of Wong Ko, one of the Defendants to the Bill of Complaint of Kahoiwai (k), Palauolelo (k), Kahoohuli (w) and Kainaina her husband, Kealopelapela, Keohokii, Moeikauhane and George Clark her husband, Kaiwilei, Harriet Hapai and Akau Hapai her husband, Esther Wilson and William Wilson her husband, Elizabeth Sniffen, Liloi and Liloi her husband against Paakuku, Lilii Sniffen, Laike Sniffen, Samuel Sniffen, Noa Sniffen, Miner Sniffen, Keola Sniffen, and Namoomoo Sniffen, minors by George E. Miner their Guardian, Keoni Sniffen, Wong Ko this defendant, J. Komoikehuehu and A. Roderick.

This Defendant, reserving to himself all right of exception to the said Bill of Complaint, for answer thereunto, or to such parts thereof as he is advised is necessary or material for him the said Wong Ko, to make answer unto, this Defendant answering saith, that he has no knowledge of any of the matters and things in the said Bill of Complaint alleged and set forth, except as hereinafter set forth, and this Defendant admits that Paakuku one of the said Defendants on the 11th day of November 1869 made an Indenture of Lease to this Defendant for the term of five Years from that date, in and to the Ahupuaa of Kaonoulu, in the Island of Maui, for the consideration of Sixty Five Dollars per annum, a copy of
128 which said Indenture of Lease is annexed to the Bill of Complaint aforesaid in Exhibit marked "F"; but whether the said Indenture of Lease was made in fraud of the rights of the orators and oratrices in the said Bill of Complaint, This defendant having no knowledge thereof cannot say; and this Defendant for further answer, denies that the said consideration of the said Lease to wit, the sum of Sixty Five Dollars per year is a wholly inadequate consideration therefor, inasmuch, as it will appear by reference to

the said Indenture of Lease, copy of which is annexed to the said Bill of Complaint marked "F" that the timber and trees on the said Ahupuaa of Kaonoulu are reserved to the party of the first part in the said Indenture of Lease and also that the middle portion of the said land, enclosed with a fence, is reserved and excepted in the said Lease, and also that the cattle and stock of the party of the first part are allowed by the terms of the said Lease to run and depasture on the said land; and this Defendant further answering alleges that the only use he makes or can make of the said Ahupuaa of "Kaonoulu" is for the pasturage of his stock thereon.

And this Defendant further answering denies that he is now committing or was at the time of service of the Writ of Injunction, or has he at any time committed great waste and destruction upon the trees, timber, saplings and firewood, growing and being in and upon said Ahupuaa of Kaonoulu, and denies that he is supplying the Waikapu and Wailuku Sugar Plantations and other persons with firewood and that the proceeds of the cutting and felling of trees and saplings and that the supplies of firewood therefrom amount to Four Hundred Dollars per month or any sum whatsoever: And this Defendant, further answering, denies that he has, or his servants, workmen, agents, or any person by his authority, or direction have committed any waste, spoil or destruction on the said Ahupuaa of Kaonoulu in the District of Kula, in the
129 Island of Maui, or that he has or they have cut or felled any timber, trees or saplings growing upon said real estate or that he has or they have hauled or transported any timber, firewood, logs or trees on said Ahupuaa of Kaonoulu, or has or have sold or otherwise disposed of the same, and this Defendant submits that any or all of such acts, if done by him or them would be in direct violation of the terms of the said Indenture of Lease.

And this Defendant denies all and all manner of collusion and confederacy with the said Paakuku, Keoni Sniffen, George Miner as Guardian of the minor children of B. H. Sniffen, J. Komoikehuehu, and A. Roderick or with any of them wherewith he is by the said Bill of Complaint charged.

And this defendant avers that he is ready to aver, maintain and prove as this Honorable Court shall direct all the matters and things averred and alleged by him in this his Answer to all the matters and things in the said Bill of Complaint material and necessary for him to answer unto, and humbly prays to be hence dismissed with his proper costs and charges in this behalf most wrongfully sustained.

WONG KO.
A. F. JUDD,
Att'y for Def't.

OAHU, *ss:*

Wong Ko, the Defendant above named being duly sworn doth depose and say that he has heard read and explained to him the foregoing answer by him subscribed, and that the facts therein set forth are true and A. F. Judd being duly sworn doth say that he read

and explained the foregoing answer to the above named Wong Ko and verily believes that he understands the same.

WONG KO.
A. F. JUDD.

Sworn and subscribed to before me this 30th day of November, A. D. 1871.

JNO. E. BARNARD,
Deputy Clerk Sup. Court.

130 Endorsement: E. 165. Supreme Court. In Equity. Kahoiwai (k) et al. vs. Paakuku et al. Answer of Wong Ko. Filed by A. F. Judd 30th Nov'r, 1871. Jno. E. Barnard, Dep. Clerk Sup. Court.

131 *Imua O Ka Mea Hanohano Alfred S. Hartwell, Lunakanawai Mua O Ka Aha Kiekie O Ko Hawaii Pae-Aina.*

KAHOIWAI (k) et als.
vs.
PAAKUKU (w) et als.

He Bila Hoopii no ka Mahele Waiwai.

Ko hele mai nei o J. Komoikehukehu, kekahi o ka poe i Hoopii ia, me ka malama hoi i na Olelo Hoohalahala ma keia hope aku, no ka nui o ka mea kuhihewa, kue i ka mea pono ame ka oiaio iloko oua Bila la e olelo ia nei, Nolaila, ke hai nei oia i kana olelo pane penei

Aohe no i ike ka mea i Hoopii ia, ia Kahoiwai (k), o ka Mokupuni o Oahu, Palaualelo o Kohala, Mokupuni o Hawaii, Kahoohuli o Honokohau Mokupuni o Maui, Kealopelapela wahine kane make, ia Kaiwilei, Keohokii (k) Moeikauhane (w) ame Kaiwilei o ka Mokupuni o Hawaii, he mau keiki, a Hooilina paha lakou no kaiwilei i make, pela paha aole paha, aole i ike ia mea i Hoopii ia

Eia kekahi mea i maopopo ole i ka mea i Hoopii ia. O ka pili ana o Harriet Sniffen ame Akau Hapai kana kane mare, e noho ana ma Hilo i Hawaii. Elizabeth Sniffen ame Leloi kana kane mare, ame Esther Sniffen o William Wilson kana kane mare, no Honolulu, Mokupuni o Oahu, ia Makanoenoe ame B. F. Sniffen kana kane mare ua make laua

Eia kekahi aohe i maopopo i ka mea i Hoopii ia ka make ana o Keaka, aka, ua maopopo i ka mea i Hoopii ia, he waiwai paa no kona, no Hewahewa mai kona kaikunane i make, ua mare ia keia Keaka me kakahi kanaka o Nahinalau kona inoa, a he mau keiki ka laua, aole nae i ike keia mea Hoopii ia i keia mare ana o Keaka ame na keiki a ua Keaka la, eia wale no kana i ike, ua lohe ia, o keia Paakuku e Hoopii ianei, he kaikamahine ia na Keaka, aole he moopuna e like me ka olelo o ka Bila Hoopii

132 Ua maopopo no i ka mea e Hoopii ia nei, o na aina e olelo ia nei, ua pili no ia, ia Keaka i kona wa e ola ana, oia

hoi ke Ahupuaa o Koanaulu ma Kula i Maui, ame Kaluapulu i kahili i Oahu, a o ka aina ma Wailuku, aole no i maopopo i ka mea e Hoopii ia nei

I ke komo ana o Paakuku maluna o kela aina, mahope iho o ka make ana o Keaka, ua ike no ka mea e Hoopii ia nei, a o na Hooilina o Makanoenoe, aole loa i ike iki ka mea e Hoopii ia nei i ke komo ana, O ka mea e Hoopii ia nei, ua ike no ia i kekahi Papalapala a Keaka i hana ai mamua o kona make ana i kapa ia he Palapala Kauoha, a ua hookomo ia ma ka Aha Hooilina i mau o ka Mea Hanohano James W. Austin, me ka hoapono ia e ua Aha'la ame ka hoonoho pu ia ana mai o ka mea e Hoopii ia nei, i i Luna Hooponopono waiwai, malalo o keia Palapala Kauoha, ua oiaio no, ua pau ka hana ma ua waiwai'la, a ua hookuu ia ka Luna Hooponopono waiwai e olelo ia nei, ma ka la 16, o Decemaba M. H. 1869 i mua o ka mea Hanohano, H. A. Widemann kekahi o na Luna Kanawai o ka Aha Kiekie, ma ke ano o ka Palapala Kauoha a Keaka i hana ai, Aole no i maopopo i ka mea i Hoopii ia ke ano o Paakuku, he Luna malama waiwai paha no na Hooilina o Keaka, aole paha, na ka Aha no e nana ia mea

Eia kekahi, ua maopopo no i ka mea e Hoopii ia nei, ke kuai ana o Paakuku ia John Ii, ma ka la 10 o Novemaba M. H. 1869 no na dala he kanalima "$50" i kela aina ma Kalihi i kapa ia Kaluapulu, Palapala Hooko 3237, Ewalu apana a o ke kuai kalohe ana nae a Paakuku e like me ka Bila e olelo ia nei, aole ia i maopopo i ka mea e Hoopii ia nei, Aka, ma kona manao maoli, ua kuai no ua wahine la ma ke ano aloha ia John Ii, no ka mea, he ano hoahanau ia

O ka hoakaka ole ana o Paakuku i ka nui o ka loaa ma kela aina ma Kalihi i mua o na Hooilina, mai ka wa mai i make ai o Keaka,
aole no ia i maopopo i ka mea e Hoopii ia nei, ame kona ohi
133 ana i na loaa o kela aina. Aole no i maopopo ka ohi ana o
Paakuku, ame ke kuai ana i na laau e ulu na maluna o Koanaulu ma ka Mokupuni o Maui, ame ke kuai ana i na laau wahie, mai ka make ana o Keaka a hiki i ka wa i hoolimalima ia ai ua aina la.

Eia Kekahi, ua ike no ka mea i Hoopii ia, i ka hoolimalima ana o Paakuku, o Koanaulu ma Maui ia Wong Ko, Pake, aka, o kana hana ana ma ke ano kalohe, me ke kue i ka pono o na Hooilina eae, aole i ike ka mea e Hoopii ia nei ia mea

Ke hoole loa nei ka mea i Hoopii ia, i ka olelo o ka Bila Hoopii, e olelo ana, o keia mea i Hoopii ia kekahi i paipai ia Paakuku, ma kekahi hana kalohe, me kekahi hana kue i na pono o na Hooilina ma ia Hoolimalima ana, aole nohio i ike keia mea e Hoopii ia nei, i kekahi hanaino a Wong Ko, maluna o kela aina o Koanaulu ma ke oki ana i na laau, ame na laau opiopio, ame kona kuai ana i ka wahie, i kela mau aina mahi ko, ma Waikapu ame Wailuku ame ke kuai ana me na poe eae, aole no i maopopo i ka mea e Hoopii ia nei ka nui o na poho i olelo ia $400. Eha haneri dala i ka mahina, pela paha aole paha, aole no he maopopo i keia mea Hoopii ia, ka hiki ame pa hiki ole o Paakuku ame Wong Ko, ke uku aku i ka nui o keia poino

Eia kekahi, aole i maopopo iaia ka hele ana o Paakuku mawaho

o ka Palena i haawi ia mai iaia, malalo hoi o ka mana o ka Palapala a Keaka i haawi mai ai, a me kona mana ma ke kuai ana i na aina i oleloia, ia John Ii ame [illegible] hoolimalima ana i ka Pake, ame kona oki ana i ka laau, ame ka wahie, ame kona hoike ole ana aku i na Hooilina eae, ika nui o na loaa o keia mau hana ana i hana ai

O kona kuleana ma ua aina nei, i oleloia, oia hoi ka hapaono pela paha ma ka olelo o keia Bila, ua kuai o Paakuku i ua aina nei o Kaluapulu ma Kalihi i Oahu ia John Ii, ma ke ano aloha, a makana wale pala paha, e like me ka olelo mua, a o kela kuia ana, he mea ia e hana epa ai i ka pono o na Hooilina eae, na ka Aha no e
134 nana mai ia mea

He oiaio no, ua make o John Ii ma ka makahiki 1870, mahope no nae o ka hana ana o keia mau Palapala Hoolilo aina e olelo ia nei, He oiaio no ua hana no o John Ii i kekahi Palapala Kauoha hopeloa, ma ka la 28 o Aperila M. H. 1870, a ua hoapono ia ua Palapala'la, ma ka Aha Hooilina ma ka la 7 o Julai 1870 Ua oiaio no ua waiho mai o John Ii, ma kona make ana i kehahi kaikamahine opiopio nona ka inoa Airine Haalou Ii, a me kela Palapala Kauoha, Ua hooko ia o A. F. Judd ame ka mea e Hoopii ia nei, i mau Luna Hooko no ua Palapala Kauoha hope loa'la, a i mau Makua nohoi no ua kaikamahine la, a ua hoopuka ia i mau Palapala Hookohu e like me ia, ma ka la 7, o Feberuari M. H. 1871, A he oiaio no, o J. Komoikeehuehu oia no ka Hooilina o kela Ili Aina o Kaluaopulu ma Kalihi i Oahu, He oiaio no, ma ka la 12 o Januari M. H. 1871 ua kuai no keia mea Hoopii ia, A. Roderick i ka Apana 7 o kela Ili aina o Kaluapulu, ame ka Apana 8 no na dala $300. O ka olelo o keia Bila Hoopii e olelo ia nei, ua hui pu o J. Komoikeehuehu me John Ii, ma ke kuai ana me Paakuku, ma ke ano kalohe, ame ke ano Epa, a kue i ka pono o na Hooilina e olelo ia nei, Ke hoole loa nei keia mea i Hoopii ia, ia mau olelo, aole no oia i hui pu iki me John Ii ma ia hana ana, o ke kuleana o keia mau waiwai e olelo ia nei, e like me ka olelo mua, na ka Aha no ia e nana mai ia mau mea.

Eia kekahi, o ka hui pu ana o keia J. Komoikeehuehu me ka poe i Hoopii ia e olelo ia nei ma ka Bila, a kuka pu ana me lakou, ma ke ano kalohe a apuka, i mea e nele ia na Hooilina e olelo ia nei, Ke hoole loa nei keia mea i Hoopii ia i kela mau hana

Eia ka olelo hope loa a keia mea i Hoopii ia, O kona kuleana oiaio i ka aina o Kaluapulu e olelo ia nei ma Kalihi i Oahu, aia no ia malalo o ka Palapala Kauoha a John Ii, a o ko John Ii kuleana aia no ia malalo o ka Palapala Kuililo me Paakuku. Nolaila
135 ke noi aku nei keia mea Hoopii ia i keia Aha Hanohano, e hookuu mai iaia, ma waho ae o keia Palapala Hoopii honua ole iho no iaia, a me ka haawi aku iaia i na Koina Kupono.

Honolulu Decemaba 8th 1871

J. KOMOIKEHUEHU

Ke hoohiki mai nei o J. Komoikehuehu, ua heluhelu ia na olelo pane maluna ae nei, mai ka mua a ka hope, a ua ike i na olelo apau o loko, a ua ike no, ua oiaio ia mau olelo, koe no nae na mea ana i

lohe ai mai a hai mai, Aka, ma ia mau mea, ua manao wale no ia he oiaio.

J. KOMOIKEHUEHU

R. G. DAVIS,
Att'y & Solicitor for Komoikelehehu.

Subscribed and sworn to before me this 8th day of December, A. D. 1871.

JNO. E. BARNARD,
Dep. Clerk, Sup. Court.

Endorsement: E. 165. Kahoiwai et als. vs. Paakuku et als. In Equity. Answer of J. Komoiekaehuehu, one of the Defendants. Honolulu December 8th, 1871. Filed by R. G. Davis, W. R. Seal, Clerk.

136 Before the Honorable Elisha H. Allen, Chief Justice of the Supreme Court of the Hawaiian Islands and Chancellor of the Kingdom. In Equity.

KAHOIWAI et al.
vs.
PAAKUKU et al.

The Answer of Paakuku, one of the Defendants, to the Bill of Complaint of Kahoiwai k, Palauolelo k, Kahoohuli w, and Kanaina, Her Husband; Kealopelapela w, Keohokii, Moeikauhane, and George Clark, Her Husband; Keiwilei k, Harriet Sniffen, and Akau Hapai, Her Husband; Elizabeth Sniffen and Liloli, Her Husband; Esther Sniffen and William Wilson, Her Husband, Against Paakuku (w), this Defendant; Lilii Sniffen, Laike Sniffen, Samuel Sniffen, Nora Sniffen, Miner Sniffen, Keola Sniffen, and Namoomoo Sniffen, Minors, by George E. Miner, Their Guardian; Wong Ko, J. Komoikehuehu and A. Roderick.

This Defendant, now and at all times hereafter, saving and reserving to herself all and all manner of benefit and advantage which may be had or taken to the manifold errors, insufficiencies and inconsistencies in the said Bill of Complaint contained, for Answer unto or unto such parts thereof as she — advised is material or necessary for her to make answer unto. Answering saith that she admits it to be true that Keaka (w) died on the 17th day of March A. D. 1868, at Kula in the Island of Maui aforesaid, that during her lifetime, and up to the 11th day of March 1868, she was seized and possessed of the real Estate in the said Bill of Complaint afterwards described, which she inherited as the heir of her brother Hewahewa deceased,

This Defendant also admits that the said Keaka deceased was married to one Nahinalau, who died before the said Keaka
137 deceased, and had issue of said marriage, as in the said Bill of Complaint alleged and set forth, and this Defendant ad-

mits that the children and grandchildren of the said Keaka are correctly enumerated and set forth in the said Bill of Complaint, except that there was a son of Makanoinoi and B. H. Sniffen Elijah by name, who died intestate, in his nonage, and without issue,

And this Defendant further answering admits that during her lifetime and up to the 11th day of March 1868, shortly before her death, the said Keaka was seized and possessed (in fee simple) of the Ahupuaa of "Kaonoulu" at Kula, in the Island of Maui, but whether it contains 30,000 acres this Defendant not knowing is unable to say, but believes it to be much less; And this Defendant further answering avers that the said Keaka on the 3d day of October A. D. 1850 by deed dated that day sold and conveyed to Elijah Sniffen, the son of Makanoinoi and B. H. Sniffen, a portion of the said Ahupuaa of Kaonoulu, containing Six Hundred Acres, which said Deed of Conveyance is in the possession of George E. Miner, Guardian of the Minor children of the said Makanoinoi, and B. H. Sniffen,—one of the defendants—and which this defendant asks the said George E. Miner to produce at the trial: And this Defendant admits that the said Ahupuaa of Kaonoulu is included in the Land Commission Award No. 3237 shown in Exhibit marked "A" of the said Bill of Complaint; And this Defendant also admits that the said Keaka during her lifetime up to the 11th day of March 1868 was seized and possessed of the tracts of land called the Iliaina of Kaluapulu, situated in Kalihi, Island of Oahu, designated in Award of the Land Commission No. 3237 apana 1, shown in Exhibit marked "B", and more particularly described in a deed from this Defendant to John Ii, shown in Exhibit marked "C", as alleged in the said Bill of Complaint: And this Defendant also admits that the said Keaka
138 was seized and possessed during her lifetime and at the time of her death, of a Kuleana of land in Wailuku, Island of Maui as set forth in said Bill of Complaint and as described in Exhibit marked "D" thereto annexed.

And this defendant further answering admits that the said Keaka before her death, on the 12th day of February 1850, made an instrument in writing, but this Defendant denies that it is "anomalous in its character" and this Defendant admits that partakes of the nature of a Will and avers that it was a Will, and denies that it also partakes of the nature of a deed of trust: And this Defendant also admits that it was, thereafter, to wit, on the 15th day of December A. D., 1868, on the petition of this Defendant, admitted to Probate as the last Will and Testament of the said Keaka, deceased, by the Honorable James W. Austin, then Second Assistant Justice of the Supreme Court, Sitting in Probate, and this Defendant also admits that, at the request of this Defendant, one J. Komoikehuehu was appointed Administrator of said Estate, with the Will annexed, a copy of which instrument in writing is annexed to the said Bill of Complaint marked Exhibit "E", And this Defendant admits that the said Estate has been fully administered upon and the said Administrator discharged, on the 16th day of December A. D., 1869, by the Honorable H. A. Widemann, Second Associate Justice of the Supreme Court, sitting in Probate.

And this Defendant further answering says that, subsequent to the execution of the said Will, the said Keaka, being moved thereto by love and affection and for the consideration of the sum of Five Dollars to her paid, did, on the 11th day of March, A. D. 1868, make, execute and deliver to this Defendant a certain instrument in writing, a copy of which is hereunto annexed in Exhibit marked
139 "G", and made a part of this Answer, (proffer of which instrument is hereby made,) by which said instrument, she, the said Keaka, did bargain, sell and convey, absolutely to this Defendant, the lands known as "Kaonoulu" in Kula, in the Island of Maui, and the land of "Kaluapula", in Kalihi, in the Island of Oahu, being the same lands which are set forth in the Complainants' Bill of Complaint and described in Exhibits "A", "B" and "C" thereto annexed: and this Defendant avers and submits that by virtue of the said instrument the title in the said lands vested in her absolutely, for herself, her heirs and assigns forever: And this Defendant avers that she has ever since held possession of the said land of "Kaonoulu" except so far as the Lease hereinafter mentioned affects the possession, and that she has also held possession of the said land of "Kaluapulu" since the said 11th day of March, 1868, until the conveyance thereof to John Ii, hereinafter mentioned:

And this Defendant denies that, after the death of the said Keaka, she went into possession of the said real Estate jointly with the Orators and Oratrices and the other heirs of Makanoinoi, And further denies that any of the said Orators and Oratrices have ever had possession of any of the lands aforesaid, in any way, but avers the truth to be that from the time of the Conveyance aforesaid before the death of the said Keaka, up to the present time, this Defendant has held undisputed possession of the Ahupuaa of "Kaonoulu" and that the aforesaid Makaonoinoi and her Children have resided upon the said Ahupuaa of "Kaonoulu", by the permission and suffrance of this Defendant and by no other right whatsoever.

And this Defendant further answering says that subsequent to the execution of said Will of Keaka on the 12th day of February 1850, the said Keaka, did on the 11th day of March 1868, make, publish and declare an instrument in writing as and for her Last Will
140 and Testament, by which she devised the said Kuleana of land situated in Wailuku, Island of Maui, to her daughter Apia, but that said instrument, not being attested by two competent witnesses subscribing thereto, was refused Probate on the 26th day October
of [August]* A. D., 1868, by the Hon. A. J. Lawrence then Circuit Judge of the Second Judicial Circuit, sitting as a Court of Probate, Copy of which said instrument in writing is hereunto annexed in Exhibit marked "H" and made a part of this Answer, and the records of the Probate Court aforesaid of the said 26th of August 1868, are referred to in proof:

And this Defendant further answering says that the Will of Keaka of the 12th of February 1850 though admitted to Probate

[* Word enclosed in brackets erased in copy.]

had no effect as regards this Defendant touching the lands of "Kaonoulu" and "Kaluapulu" aforesaid, by reason of the subsequent Deed of the said Keaka dated the 11th day of March, 1868, hereinabove set forth. And this Defendant further avers and submits that even if the said deed of the 11th day of March 1868 had not been executed and delivered by the said Keaka to this Defendant, the effect of the said Will of the 12th of February 1850 would have been to devise the land or Ahupuaa of "Kaonoulu" to this Defendant in fee, giving the right of personal residence and cultivation thereon to the brothers and sisters of this Defendant who might be alive at the time of the decease of the said Keaka, under this Defendant, and subject to her Consent.

And this Defendant further answering avers and submits that it will appear by the Will of Keaka of the 12th of February 1850, that the Kuleana of land situated in Wailuku, in the Island of Maui, described in Exhibit "D" of the Complainants' Bill of Complaint, is not mentioned in or devised by the said Will, and that, in consequence of the failure of probate of the Will of Keaka of the 11th of March 1868, shown in Exhibit Marked "H", all of the children of
141 the said Keaka, and the issue of those deceased by right of representation are entitled equally in this said land or Kuleana at Wailuku: And this Defendant avers that she never has claimed this said Kuleana at Wailuku as solely her own, and hereby disclaims any further interest or title therein than one undivided sixth part of the same as a tenant in common with the said other heirs at law of Keaka deceased.

And this Defendant further answering says and submits to this Honorable Court, whether the land called "Kaluapulu", in Kalihi, Island of Oahu, is by the said Will of Keaka of the 12th of February 1850 devised to this said Defendant and her brothers and sisters. And this Defendant admits that she did on the 10th day of November A. D., 1869, sell and convey to John Ii, all her right, title and interest in the said Iliaina of "Kaluapulu" in Kalihi aforesaid, for the consideration [above]* in the said Bill of Complaint set forth, as will appear by the said deed, copy of which is annexed to the said Bill of Complaint in Exhibit marked "C"; and this Defendant avers that this she had a legal right to do, as the title of the said Iliaina or land of "Kaluapulu" became vested in her (this Defendant) by virtue of the said deed of Keaka of the 11th day of March 1868; And this Defendant further answering admits that she received the rents from the said land of "Kaluapulu" from the date of the said last mentioned deed to the time of the sale aforesaid to John Ii, and admits that she failed to account to the Orators and Oratrices aforesaid, for the said rents or any part thereof or for any part of the purchase money of the tracts of land so as aforesaid sold and conveyed to John Ii; and this Defendant submits that she had a legal right to do this by virtue of her ownership of the said land as hereinabove set forth.

142 And this Defendant admits that on the 11th day of November 1869, she made an Indenture of Lease to one Wong

[* Word enclosed in brackets erased in copy.]

Ko (pake) for the term of five years from that date, but not for the whole of the Ahupuaa of "Kaonoulu" as alleged in the Complainants' Bill of Complaint, but only for a part thereof, the middle portion of the said land, enclosed by a fence, being reserved, and the timber and trees of the said land being also reserved and excepted, And this Defendant denies that the consideration of the said Lease being Sixty-five dollars per year is wholly inadequate; And this Defendant denies that the Lease aforesaid was in fraud of or in absolute disregard of the right of the Orators and Oratrices aforesaid, inasmuch, as by the said Deed of Keaka, of the 11th day of March 1868, and even by the terms of the said Will of Keaka of February 12th 1850, the Orators and Oratrices aforesaid, have not, nor ever did have any rights in the said Ahupuaa of "Kaonoulu," of which the said Lease could be in contravention:

And this Defendant further Answering, denies that the said Wong Ko is committing great waste and destruction upon the trees, saplings and firewood growing and being in and upon the said Ahupuaa of "Kaonoulu," and is supplying the Waikapu and Wailuku Plantations and other persons with firewood and that the proceeds of the cutting and felling of the trees and saplings, and the supplies of firewood thus furnished, besides the waste and destruction, amount to Four Hundred Dollars per month or any sum whatsoever, and this Defendant submits if she be required to answer further in this behalf;

And this Defendant admits all the allegations in the said Bill of Complaint contained in regard to the death of the said John Ii, the making and execution of his Last Will and Testament, and
143 the admission thereof to Probate, and that she has been informed and believes it to be true that the said J. Komoikehuehu, the devisee of the said John Ii of the said land of Kaluapulu, has sold a portion of the said land to one A. Roderick, but this Defendant submits that she is not required to answer further as regards this land, inasmuch as by the effect of her said Conveyance to the said John Ii, she has no further interest in the premises:

And this Defendant denies that since the death of the said Keaka, the Orators and Oratrices aforesaid have been and are now severally seized in fee, as well as Keoni Sniffen, Lilii Sniffen, Laike Sniffen, Samuel Sniffen, Noa Sniffen, Miner Sniffen, Keola Sniffen and Namoomoo Sniffen, J. Komoikehuehu and A. Roderick, as tenants in coparcenary with this Defendant, in the land of "Kaonoulu," Kula, in the Island of Maui, or in the Iliaina or land of "Kaluapulu," Kalihi, Island of Oahu; and this Defendant admits that in the land or Kuleana in Wailuku, Island of Maui, aforesaid, the Orators Kahoiwai, Palauolelo and Kahoohuli are entitled to one sixth part each, this Defendant to one sixth, Keohokii, Moeikauhane and Keiwilei to one third of one Sixth each, and Harriet, Elizabeth, Esther, Keoni, Lilii, Laike, Samuel, Noa, Keola Miner, and Namoomoo Sniffen to one Eleventh part of one Sixth each, as tenants in coparcenary:

And this Defendant denies that the Orators and Oratrices aforesaid have ever applied to this Defendant to join or concur with

them in making a fair and just partition of the said real estate, between them, in order that their respective shares might be enjoyed in severalty, but this Defendant avers that she has always been ready and willing to make a just and fair partition of the Kuleana of land situated in Wailuku aforesaid, with the Orators and Oratrices and the other heirs at law of the said Keaka.

144 And this Defendant submits to this Honorable Court if she ought to be compelled to make any account of the rents and moneys she may have received arising and coming out, of and from the said Ahupuaa of "Kaonoulu," in Kula, Island of Maui, or the land of "Kaluapulu" in Kalihi, in the Island of Oahu, or make partition thereof, unless a title thereto by the said Orators and Oratrices be established: And this Defendant avers that during the short time in which the said Kuleana of land at Wailuku, Island of Maui has been in her possession, it has been unproductive, except that she has received at sundry times, infrequently, from a Native tenant thereon some small amounts of food for her own consumption of which she has kept no account.

And this Defendant respectfully submits that upon a full and equitable examination of the charges in the said Bill of Complaint, the deed of Conveyance made and executed by this Defendant to John Ii, and the Indenture of Lease to Wong Ko, should not be declared void.

Without that any other matter or thing in the said Complainants' Bill of Complaint contained, material for this Defendant to make answer unto and not hereby and herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, All which matters and things this Defendant is ready to aver, maintain and prove as this Honorable Court shall direct, hereby denying all and all manner of confederacy and collusion whereby she is by the said Bill of Complaint charged, And humbly prays to be hence dismissed with *his* reasonable costs and charges in this behalf and wrongfully sustained.

PAAKUKU,
By Her Att'y A. F. JUDD.

145 OAHU, *ss:*

Honolulu, December 9th, 1871.

Paakuku, the Defendant above named, being duly sworn doth depose and say that she has had interpreted to her the foregoing answer by her subscribed, and that the matters and things therein set forth are true of her own knowledge, except as to those matters which are therein stated to be upon information and belief and that as to those she believes it to be true.

her
PAAKUKU. X
mark.

A. F. JUDD,
Solicitor and of Counsel for Def't.

Sworn and subscribed to before me this 9th day December A. D. 1871.

WALTER R. SEAL, *Clerk.*

OAHU, *ss:*

A. F. Judd being duly sworn says, that he has interpreted the foregoing Answer to the said Paakuku, that she understands the same as he verily believes.

A. F. JUDD.

Subscribed and sworn to before me this 9th day of Dec. A. D. 1871.

W. R. SEAL, *Clerk.*

146 EXHIBIT "G."

Palapala Haawi.

E ike auanei na mea a pau ma keia palapala Owau o Koleka Keaka ka Hooilina o H. Hewahewa, ke haawi lilo loa aku nei i kuu aina i kapaia ka inoa o Kaonoulu ma Kula, Maui a me Kaluapulu i Kalihi Mokupuni Oahu no kuu kaikamahine Paakuku e lilo mau loa no ia aina iaia ma ke kuai ana mai me a'u no na dala Elima a e lilo loa iaia keia mau aina i oleloia ae maluna a kau aku i kona Hooilina a mau Hooilina paha koe nae na kuleana o na kanaka, aka o ko'u mau waiwai a pau e pili ana ineia mau aina e lilo no ia ia Paakuku.

Eia kekahi aole loa e hiki i ko'u mau hooilina a hooko kauoha ke kue a kaili a hoole a hoopii ma keia hope aku no keia haawi & kuai a'u.

A eia na palena o Kaonoulu,
Mauka
Ma Makawao
Ma Honuaula
Ma kai
A eia na palena o Kaluapulu
Oahu,
Ma Ewa
Ma Waikiki
" Uka
" Kai,

Eia hou o na pilikia a pau a hoopii ia paha ma keia hope aku e pili ana no keia mau aina Kaonoulu & Kaluapulu a me Kailina mai o ka Moi Kamehameha III paha a me kona mau hooilina a me ka poe e ae e pili no ia pilikia maluna o kuu mau hooilina a luna paha a mau loa aku.

No ka oiaio o keia haawi lilo ana i keia mau aina no kuu
147 Kaikamahine Paakuku nolaila ke lawe nei au i na Dala Elima mai oia mai oia hoi ka mea e ko ai ka'u haawi ana ma ke ano kuai

No ka oiaio o keia ke kau nei au i kuu kaha mahope o kuu inoa me ka ike maka o na hoike i keia la 11 o Maraki M. H. 1868

kona
KOLEKA KEAKA X
kaha

Hoike
[G. E. MINER.]*
B. IOTAMA

Kona
KANEI X
Kaha

148 EXHIBIT "H."

Palapala Hooilina.

Imua o ke Akua mana loa Amene. O kau palapala Hooilina Hope loa keia, oiai e maikai ana ko'u ola i keia wa, ke hooili aku nei au i kuu kuleana aina Kepuakeeo i Wailuku, Maui, he e 4-70/100 Eka, a oi aku a emi mai paha no kuu kaikamahine i kapaia ka inoa o Apia nona a mau loa aku a i kona mau hooilina paha a no ka oiaio o keia ke kau nei au i kuu kaha mamua o keia inoa.

kona
KEAKA X
kaha

Hoike
B. IOTAMA
[G. E. MINER]*

Malaki 11, 1868.

Endorsed on the back: "In re Keaka Dec'd. Rec'd & filed the 26th of Aug. 1868." This Will set aside at hearing at Lahaina, on Oct. 6, 1868."

Endorsement: E. 165. Supreme Court (In Equity) Kahoiwai et al. vs. Paakuku, et al. Answer of Paakuku. Filed by A. F. Judd this 9th day of December, A. D. 1871. W. R. Seal, Clerk.

[*Name erased in copy.]

149 Before the Honorable Alfred S. Hartwell, First Associate Justice of the Supreme Court & Vice Chancellor of the Kingdom.

At Chambers, Court House, Honolulu. Before the Honorable E. H. Allen, Chief Justice and Chancellor, This 9th Day of Dec'r, 1871.

KAHOIWAI (k) and Others
vs.
PAAKUKU (w) and Others.

The Complainants in this suit applying to this Honorable Court to discontinue as to the Respondents Keoni Sniffen and also George E. Miner, Guardian of the persons & property of the minor heirs of B. F. Sniffen, deceased and moving this Honorable Court that the said Respondents be made parties Complainant to the Bill, the said respondents consenting on motion of W. C. Jones & R. H. Stanley, Solicitors for Complainants, It is hereby ordered that the said Keoni Sniffen and also George E. Miner, guardian as aforesaid be made Complainants to the Bill of Complaint, and that they be so entered of Record in this suit.

Dated Honolulu December 9, 1871.

ELISHA H. ALLEN,
Ch. Jus. Sup. Court.

Endorsement: E. 165. Supreme Court. In Equity. Kahoiwai (k) & others vs. Paakuku (w) & others. Order discontinuing Respts. & making them Complainants. Stanley & Jones, Solrs. for Complts. Filed the 15th day Dec., 1871. W. R. Seal, Clerk.

150 Before the Honorable Alfred S. Hartwell, First Associate Justice of the Supreme Court & Vice Chancellor of the Kingdom.

Before the Hon. E. H. Allen, Chief Justice of the Supreme Court and Chancellor, at Chambers, in the Court House, at Honolulu, the 9th Decr, 1871.

KAHOIWAI (k) & Others
vs.
PAAKUKU (w) & Others.

On reading and filing due proof of personal service of the summons issued in this cause and also copy Bill of Complaint on A. Roderick, one of the Defendants, on or before the Return day thereof, to wit: on the Seventeenth day of November, A. D. 1871, and further time having been granted the Defendants for appearance and answer, to this 9th day of December, A. D. 1871, and said Defendant A. Roderick not having appeared or filed an answer to said Bill of Complaint; on motion of R. H. Stanley & W. C. Jones, Solicitors for Complainants. It is hereby ordered that the said Bill of Com-

plaint which is filed in this cause be and the same is hereby taken as confessed by said Defendant A. Roderick.

Dated Honolulu Dec. 9, 1871.

ELISHA H. ALLEN,
Ch. Jus. Sup. Court.

Endorsement: E. 165. Supreme Court. In Equity. Kahoiwai (k) — others vs. Paakuku (w) & others. Order pro Confesso as to A. Roderick. Stanley & Jones, Solrs. for Complts. Filed the 15th day of Dec., 1871. W. R. Seal, Clerk.

151 Supreme Court of the Hawaiian Islands.

In Equity.

Before the Honorable Alfred S. Hartwell, First Associate Justice of the Supreme Court & Vice Chancellor of the Hawaiian Islands.

KAHOIWAI (k) and Others
vs.
PAAKUKU (w) and Others.

Replication.

The Repliants in the above entitled suit in Equity saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the answers filed — the Defendants in this suit, for Replication thereunto, say that they will aver, maintain, and prove, their Bill of Complaint to be true, certain and sufficient, in the Law, to be answered unto; and that the said answers of the said Defendants are uncertain, untrue and insufficient, — be Replied unto by the Complainants, without this, that any other matter or thing whatsover, in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these Repliants are and will be ready to aver, maintain, & prove, as this Honorable Court shall direct and humbly pray as in and by their said Bill they have already prayed.

R. H. STANLEY &
W. C. JONES,
Solicitors for Complainants.

Honolulu, May 26, 1873.

152 Endorsement: E. 165. Supreme Court. In Equity. Kahoiwai (k) & others, vs. Paakuku (w) & others. Replication. R. H. Stanley & W. C. Jones, Solicitors for Complts. Filed 26th May, 1873. Jno. E. Barnard, Deputy Clerk.

153 EXHIBIT G.

Copy.

Palapala Haawi.

"E ike auanei na mea a pau ma keia palapala Owau o Koleka " Keaka ka Hooilina o H. Hewahewa kekhaawi lilo loa aku nei i " kuu aina i kapa ia ka inoa o kaonoulu ma Kula Maui a me Ka- " luapulu i Kalihi Mokupuni Oahu no kuu kaikamahine Paakuku " e lilo mau loa no ia aina iaia ma ke kuai ana mai me a'u no na " Dala e Lima a e lilo loa iaia keia mau aina i oleloia ae maluna a " kau aku i kona hooilina a mau Hooilina paha koe nae na kuleana " o na kanaka aka o ko'u mau waiwai a pau e pili ana ineia mau aina " e lilo no ia ia Paakuku."

"Eia kekahi aole loa e hiki i ko'u mau Hooilina a hooko kauoha ke " kue a kaili a hoole a hoopii ma keia hope aku no keia haawi & " kuai a'u a eia na palena o Kaonoulu."

"Mauka.
"Ma Makawao.
"Ma Honuaula.
"Ma Kai."
"A eia na palena o Kaluapulu.
"Oahu.

"Ma Ewa.
154 "Ma Waikiki.
" " Uka.
" " Kai.

" Eia hou ona pilikia a pau a hoopii ia paha ma keia hope aku e " pili ana no keia mau aina Kaonoulu & Kaluapulu a me Kailina " mai o ka Moi Kamehameha III paha a me kona mau hooilina a " me ka poe e ae e pili ana i ke kue mai alaila e pili no ia pilikia " maluna o kuu mau Hooilina a Luna Paha a mau loa aku"

" No ka oiaio o keia Haawi lilo ana i keia mau aina no kuu kai- " kamahine Paakuku nolaila ke lawe nei na dala e lima mai aia " mai oia hoi ka mea e ko ai ka'u haawi ana ma ke ano kuai"

" No ka oiaio o keia ke kau nei au i kuu kaha mahope o kuu inoa " me ka Ike maka o na hoike I keia la 11 o Malaki M. H. 1868"

kona
" KOLEKA KEAKA X
kaha

"Hoike
[G. E. MINER]*

B. IOTAMA
kona
KANEI X
kaha"

Over

[* Words enclosed in brackets erased in copy.]

155 The following endorsement is found on the back of the foregoing document, viz:

"In re Keaka Dec'd. Rec. and filed this 26 day of Aug., 1868. "This document declared by Court of Probate not to be a Will and "consequently not within the Jurisdiction of the Court. At hear- "ing in Lahaina Oct. 6, 1868."

Palapala Kuai—O Kaonoulu

156 HONOLULU, *Oahu, ss:*

I hereby certify that the foregoing is a true and faithful copy of the original Document on file in the case of Kahoiwai vs. Paakuku, and taken from the files by William O. Smith, Esqre. this day

As witness my hand this 19th day of March, A. D. 1875.

JNO. E. BARNARD,
Deputy Clerk.

Received the original of the foregoing copy this 19th March, 1875.

WILLIAM O. SMITH.

157 Supreme Court, 6 June, 1873.

In Equity.

KAHOIWAI (k) & Others
vs.
PAAKUKU (w) & Others.

Evidence Taken Before Jno. E. Barnard, Master.

On behalf of the Respondents, for the purpose of proving Exhibit G annexed to the answer, and now filed.

Present:

Messrs. Stanley & Jones for the Complainants.
A. F. Judd for Respondent Paakuku.
Kamoikehuehu for himself.

B. IOKAMA, sworn, says: I live in Makawao in the Island of Maui—I have lived there from my childhood. I knew a woman named Koleika Keaka—She is dead—I don't remember when she died—I was present when Keaka signed a paper it was at Kaonaulu, at a place called Kula, Maui.—At Keaka's house—George Miner was there, I was there, Kanei (k) was there.—George Miner wrote the paper.

(Counsel hands to witness the original Exhibit "G".)

This is the paper that Keaka left the property to Paakuku by.—I wrote the name B. Iotama, attached to it. George Miner held the

Pen and Keaka rested her hand on his while he wrote the name Koleka Keaka & this is the name so made. Kanea also signed his name as a witness. This document was read by George Miner & I heard all the contents—Keaka heard all the contents. Keaka was sick at the time, but was able to talk rationally—I don't know how long she had been sick, because I was sent for just at that moment. I don't know how long she lived afterward whether it was a few days or a week it was not a month. I don't know what day it was signed I don't remember. It was on the 11th March, 1868.

158 Cross-examined by Mr. Stanley:

Paakuku was there when it was signed, there were a good many others present but I don't remember now. Keaka (w) did not say it was a "Palapala Hooilina" or "Palapala Kauoha", but a "Palapala Hooilina Kuai".—I was living at Kaonoulu teaching school at this time—I had been living in the District of Makawao before this, & afterwards I went back to Makawao. Keaka sent for me, I know it because Keaka knew that I was a school teacher & was to write the paper but Geo'e Miner arrived before me & wrote it, & I became a witness.

Mr. C. C. Harris here conducted the case on behalf of Respondents Mr. Judd being forced to leave on business.

Examination resumed:

When I got there Geo'e. Miner had just begun to write—This is the only paper I saw signed that day. I was at Keaka's house about 2 hours. Keaka was a very old woman at this time. She was bowed with age. She was confined to her house, and was feeble. I don't know the disease she died of. She could not read. She could hear—she could see—she was not blind. She was not childish, her speech was good. I did not know Hewahewa, he died before I ever saw him; I think that George Miner, & Kenei both signed their names, I did not see Kanei sign his name, but I was going out, & I saw him sitting at the table but did not see him sign. As soon as I had signed I went out, but I saw Kanei go & sit down at the table in the seat I had just left—I saw Geo'e Miner writing, I saw him writing the document. I was standing at the door when Keaka made her mark—I was standing at the door when the paper was read—I was standing there alone, & Geo'e Miner & others, that I don't recollect, were inside. Keaka had been lying down but she was moved to the table to sign the document. She signed it on a Book with a Steel Pen. I saw only one Ink-
159 stand one of those common pyramid bottles.—Kanei was living at Keaka's house—I am no relative of Keaka's—I belong to Maui & she came from Hawaii.

KANEI, sworn says:

I belong to Lahaina. I have lived in Lahaina the last few years knew a woman by the name of Keaka, she is now dead. Saw her dead body & was present at her burial. She died at Kaonaulu,

Kula, Maui. I have forgotten what year, she died, or the month. It may have been 6 or 7 years ago. I left Lahaina & went to this land to cultivate Potatoes & had been there 3 months when Keaka died. I lived at Keaka's house. I know of a paper being written by Geo'e Miner, in Keaka's house. G. Miner & his wife & their children were there at the time & a man named Iokama. It was a paper made by Keaka [placed leaaving]* her land to her Keiki mahine Paakuku who was there at that time. Geo'e Miner read the paper and I heard it.—Geo'e Miner & Keaka said the land was for Paakuku, & then I signed my name as a witness, Geo'e Miner signed his name & then I and Iokama signed.—If the paper was shown to me I could identify the name that I wrote—The paper produced is [The last name]* the document. The last name on it is mine.—I wrote it with my own hand. I can write a little, like that, but not much I think Keaka made the mark—I expect I made the cross attached to my name but I have forgotten about it.—Geo'e Miner, Iokama, & I signed as witnesses—Keaka signed it first & we signed it afterwards—I did not see Keaka sign her name to it, I came back from my work in the middle of the day & signed it then—Keaka asked me to sign it—Keaka asked me to sign my name to the paper as a witness, to the "Palapala Hooilina Kuai."

leaving

Cross-examined by Mr. Stanley:

I had come back to the house from my work when she asked me to sign. It was 3 or 4 o'clock perhaps. I know George Miner wrote the paper because he read it to me and I signed it. As I remember, it was "Palapala Hooilinia Kuai"—Keaka told me that she had got George Miner to write the paper.—Iokama was in the house when I was up there from my work—He was inside the house, at a part where they entertain people. He was sitting down. Iokama was there when Geo'e Miner read the paper to me. He was in the same room. Keaka was in the same room sitting up, not in the bed-room. She was ailing at the time but not very sick—She was a very old woman. The day after I signed the paper I went to Lahaina & got back in about a week and in a few days after she died. About a week after I had been to work & when I got back the daughters told me she was dead. They were not Geo. Miner's own children but Sniffen's children. I have forgotten the names of all the people there—John Sniffen was there. I don't remember whether John Smith was there at night or not. I can read a little. I know this is the paper because I see my handwriting that I made to it, & therefore I think this is the one. The paper was put on the table when I signed my name—I did not see Iokama sign it, he told me that he had signed it—I did not see any other paper signed at that time, there may have been.

By Mr. Judd: This is the only paper that I heard, or saw that day.

JNO. E. BARNARD, *Master.*

[* Words enclosed in brackets erased in copy.]

Endorsed: Supreme Court. (In Equity.) E. 165. Kahoiwai, et al. vs. Paapuku, et al. Evidence taken before the Master. Paid by Mr. Judd Master's fee $5.00. J. E. B. 6th June 1873.

161 Supreme Court, 6th October, 1873.

In Equity.

KAHOIWAI et alii.
vs.
PAAKUKU et alii.

Evidence Taken Before J. E. Barnard, Master.

Present:

R. H. Stanley—for Complainants.
A. F. Judd for Respondent Paakuku.

Mr. Stanley wished it noted that the testimony was taken subject to all legal objections.

Mr. Judd then called George E. Miner, for the purpose of proving exhibit G annexed to the answer.

GEORGE E. MINER, sworn, says:

I wrote the document produced. I was at Kula Kaanoulu, at Sniffen's house—Koleka Keaka was there—I was there & Apia my wife, and Paakuku, was there, the Sniffen children, and the witnesses Kanei and Iotama was there—Keaka told me to write the paper—after I had written it I wrote her name & she made the cross. It was on the 11th March 1868—Iotama & Kanei signed as witnesses & I signed.—my name is scratched out—It was not scratched out at the time I delivered it to Judge Lawrence, but when I saw it in Lawrence's Court in Lahaina, it was scratched out. I did not see him scratch it out. Keaka knew the contents because she told me what to write & I read it over after I had written it. At that time Keaka was sick but pretty stout, she was not pupule—She had the Diarrhea—She was over 70 years old.

Cross-examined by Mr. Stanley:

Kanei & Iotama were there when I wrote the paper—Kanei
162 was there first and they sent for Iotama to come up afterwards—Iotama signed first as a witness, I wrote Kanei's name and he made the cross—Kanei & Iotama were both present, when Keaka signed the cross—They were both present when I read the paper, I think it was some time between 8 & 12 in the morning. It was in the forenoon. There was another paper signed in the morning, before this—That paper I think was signed by all the same witnesses—It was signed by Keaka—It was a deed giving a little piece of land at Wailuku to my wife. It was signed about 8

o'clock in the morning. Keaka was in the parlor when she signed exhibit "G"—She was sitting on the settee—She signed it on the top of a big Bible. Keaka was pretty old, but pretty stout, her teeth had not come out. She had her eyesight. Kanei was there when I wrote the paper & when I read it. He was in the house. I read the paper twice, once before Keaka and Kanei, and again when Iokama arrived. The paper gave the land Kaonoulu to Paakuku—Kanei was there when Keaka signed it. Iokama signed the paper immediately after Kanei signed it. That was between 8 and 12 o'clock before dinner in the forenoon. Judge Lawrence was stopping at my place and I passed it to him. I don't know whether he struck out my name or not, but he was the last man I passed it to—I am sure when Keaka signed, Kanei & Iokama both saw it—I put the Bible on the arm of the settee with the paper for her to sign. After Keaka had signed I took the Bible down on to the body of the settee & Kanei & Iokama signed it there.

JNO. E. BARNARD, *Master.*

Endorsed: Supreme Court. In Equity. E. 165. Kahoiwai et al. vs. Paakuku et al. Evidence of George E. Miner. 6 October 1873.

A. S. Hartwell Esq. has notified that this case has been transferred to him by Judge Judd.

163 *Copy of Proceedings and Documents in the Matter of the Estate of Koleka Keaka w. of Makawao or Kula, Maui, H. I., Deceased, from the Records of 2d Judicial Distr. Court in Chambers.*

"(Copy.)

"In Chambers, at Lahaina, October 6", 1868.

WAILUKU, MAUI, Sept. 1, 1868.

To the Hon. A. J. Lawrence, Circuit Judge 2d Jud. Distr., H. I.:

"Your petitioner would represent to your Honor that sometime in the year 1868 Koleka Keaka w. died at Kula, Island of Maui, and the said Koleka Keaka has left considerable property, and your petitioner would also represent to your Honor & that the said Koleka Keaka left a will or wills which are now in the possession of the Court; and as none of the heirs of said Estate have petitioned to have this will or wills probated, your petitioner being a friend of some of the supposed heirs of the said estate who are minors, would most respectfully petition your Honor, that a day be set for the hearing of the proof of the said will or wills, and that an administrator be appointed on the estate of the said Koleka Keaka w."

"(Signed) J. PORTER GREEN."

"Sworn to and subscribed before me this 1" day of September 1868."

"AND. J. LAWRENCE,
Circ. Judge 2d Jud. Distr., H. I."

164 Mr. Havekost for Devisee.

Mr. Green, Administrator of Estate of B. F. Sniffen.

Motion of Mr. Havekost for continuance on account of the absence of Iokua, a witness.

Motion by Mr. Green to set aside the Will on the ground that there was only one witness.

Motion granted & will set aside.—The name of the second subscribing witness (G. Miner) having been erased.

The Court further decides that the document purporting to be a will of the said Keaka, now on file, in favour of Paakuku, is not in the nature of a will, but of a deed of sale, and the Court not having jurisdiction in matters of that nature, the Court orders said document to the Attorney for Devisee.

Motion by Mr. Green for the appointment of an administrator.

G. MINER, sworn:

Knows Keaka, knows of her death on the 17" March 1868. Died possessed of lands. Her heirs now living at Makawao. Some of them saw the advertisement for the hearing of the case to day. The heirs of deceased are numerous. She has five children of her own, also a number of grandchildren. The names of her children are:

Pakuku, a widow.

Kahoohui, married to a native in Honokohau.

165 "Apia. G. Miner's wife.

Kahaiwai k. widower. Lives in Kohala, Hawaii.

Palaulelo. Lives at Mahukona, Kohala.

Mrs. Sniffen, Kaiwilei, and others, now dead.

Left no personal property.

Might be 2 or 3,000 acres.

Mr. Sniffen's buildings were on Keaka's land.

By Mr. Havekost: Pakuku lives on her mother's land. Lived there with her mother until her death.

Mr. GREEN, sworn:

Knows some of the property left by deceased. Don't know the number of buildings erected on the estate, but Mr. Sniffen erected his residence on part of it, and made many improvements on it. One portion of the estate extends from Mr. Sniffen's to Mr. Halstead's, on the seashore, some 5 miles. Does not know what the lands on Oahu may be worth.

The Judgment of the Court is—viz:

That J. P. Green be appointed Administrator in this Estate without bond, there being no personal property."

166 Copy.

"Palapala Hooilina.

Imua o ke Akua mana loa Amene.

O kau palapala Hooilina Hope loa keia. Oiai e maikai ana ko'u ola i keia wa, ke hooili aku nei au i kuu kuleana aina Kepua-

kaeo i Wailuku Maui he e 4 70/100 Eka a oi aku a emi mai paha no kuu kaikamahine i kapa ia ka inoa o Apia nona a mau loa aku a i kona mau hooilina paha a no ka oiaio o keia ke kau nei au i kuu kaha mamua o kuu inoa

kona
KEAKA X
kaha

Hoike
[G. E. MINER.]*
B. IOTAMA

Maloki 11, 1868."

Endorsed on the back: "In re Keaka De'd." "Rec'd & filed the 26" of Aug. 1868." "This will set aside at hearing at Lahaina on Oct. 6, 1868."

167 Copy.

"Palapala Haawi."

"E ike auanei na mea a pau ma keia palapala. Owau o Koleka Keaka, Ka hooilina o H. Hewahewa, ke haawi lilo loa aku nei i kuu aina i kapa ia ka inoa o Kaonoulu ma Kula Maui a me Kaluapulu i Kalihi mokupuni Oahu no kuu kaikamahine Paakuku e lilo mau loa no ia aina iaia ma ke kuai ana mai me a'u no na Dala elima a e lilo loa iaia keia mau aina i olelo ia ae maluna a kau aku i kona Hooilina a mau Hooilina paha koe nae na kuleana o na kanaka aka o ko'u mau waiwai apau e pili ana ineia mau aina e lilo no ia ia Paakuku."

"Eia kekahi aole loa e hiki i ko'u mau hooilina a hooko kauoha ke kue a kaili a hoole a hoopii ma keia hope aku no keia haawi &c. kuai a'u

A eia na palena o Kaonoulu
Mauka
Ma Makawao.
Ma Honuaula
Ma kai
A eia na palena o Kaluapulu Oahu.
Ma Ewa
"Ma Waikiki
"Uka
"Kai"

"Eia hou o na pilikia a pau a hoopii ia paha ma keia hope aku e pili ana no keia mau aina Kaonoulu &c. Kaluapulu a me kailina mai o ka Moi Kamehameha III paha a me kona mau hooilina a me ka poe e ae et pili ana i ke kue mai Alaila e pili no ia pilikia maluna o kuu mau Hooilina a Luna paha a mau loa aku."

168 "No ka oiaio o keia Haawi lilo ana i keia mau aina no kuu kaikamahine Paakuku nolaila ke lawe nei au i na Dala

[* Name enclosed in brackets erased in copy.]

elima mai aia mai oia hoi ka mea e ko ai ka'u haawi ana ma ke ano kuai."

"No ka oiaio o keia ke kau nei au i kuu kaha mahope o kuu inoa me ka ike maka o na hoike i keia la 11 o Malaki M. H. 1868."

Kona
"KOLEKA KEAKA X"
Kaha

"Hoike
[G. E. MINER.]*
B. IOTAMA
Kona
KANEI X
Kaha

Endorsed on the last document is: "In re Keaka de'd. Rec'd and filed this 26" day of May, 1868." "This document declared by Court of Probate not to be a Will, and consequently not within the Jurisdiction of the Court—at hearing in Lahaina Oct. 6, 1868."

That the foregoing are correct copies of the proceedings and original documents relating to the Estate of Koleka Keaka w of Kula, Maui, Deceased, on record in this Office, attests.

(Signed) ABR. FORNANDER, [SEAL.]
Circ. Judge, 2nd Jud. Distr., Haw. Isl's.

Lahaina Sept. 12, 1871.

Endorsed: E. 165. Supreme Court. (In Equity.) Kahoiwai et al. vs. Paakuku et al. Record of Probate Court of 2d Jud. Cir. Filed Nov. 6th 1873 by A. F. Judd. W. R. Seal, Clerk.

169

Supreme Court.

In Equity.

Before Hon. E. H. Allen.

KAHOIWAI & al.
vs.
PAAKUKU & al.

Notice of Motion for Hearing.

To Messrs. Stanley & Jones, Complainants' Counsel:

On Thursday Sept. 10 current at 10 o'c. a. m. I shall move the Court to hear the above entitled cause on Bill and Answers and Exhibits filed.

Yours &c.,

ALFRED S. HARTWELL,
Counsel for Paakuku.

[*Name enclosed in brackets erased in copy.]

Endorsement: Supreme Court in Equity. E. 165. Kahoiwai et al. vs. Paakuku et al. Notice of Motion for hearing. Hartwell Att'y for Paakuku one of the respts. Filed 12 Sept./74. Jno. E. Barnard, Deputy Clerk.

170 Supreme Court, 3 October, 1874.

In Equity.

Before Chief Justice Allen.

KAHOIWAI et al.
vs.
PAAKUKU (w) et al.

ALLEN, *C. J.*:

This is a petition for partition of certain lands called Kaonoulu, situate on the Island of Maui, and Kaluapulu situate in Kalihi on the Island of Oahu, and a Kuleana of land, situate in Wailuku, Island of Maui, and the Complainants claim of and by virtue of a certain instrument in writing made by one Keaka on the 12th of February, 1850, who was the admitted owner of the property in question. The Complainants allege that this instrument is anomalous in its character, partaking of the nature of a will and a deed of trust, which was afterwards, to wit, on the 15th day of December, 1868, on the petition of the Defendant Paakuku admitted to Probate as the last will and testament of the said Keaka. It is further alleged and admitted that the estate was fully administered upon and the administrator discharged.

There are other allegations in the bill touching the rents and profits of the land, received by same defendant, as well as the sale of the land in Oahu.

The Defendant answers and claims that her title is derived from Keaka, the testator of the Will referred to, by the deed, bearing date March 11th, 1868, of the lands called Kaonaulu and Kaluapulu so that in a word, the petitioners claim title to the property by the instrument in writing above referred to, and the Defendant by deed.

171 The Complainants contend, that by the will the Defendant Paakuku had a limited trust, that although she was to be the head of the family, her brothers and sisters were to enjoy the property under her as they had under the Testator. It was undoubtedly the [interest]* of the testator, that they should all have an interest in the property, when she says that "all the income of these two lands and the Konohiki days on these lands shall go to Paakuku, and [his]* brothers and sisters and their heirs after them."

intent

her

[* Word enclosed in brackets erased in copy.]

This instrument is a will, and a testator has a right to make or cancel it and there is no right which vests by it, which disables the testator during her life from making a conveyance by deed. It will not be contended that because a person has made a will disposing of his property, which can only have [any]* effect after his death, that it operates as a restraint upon his power of conveying his property by deed during life. A deed in trust for the benefit of others, and placed upon record would be good against a subsequent conveyance—a will is an instrument entirely different in its legal effect.

It is contended further by the Petitioners that the Probate of the will on the petition of Paakuku was the acceptance of the terms of that instrument and she is precluded from claiming under a different instrument.

There was other property named in the will besides the land, and it was the duty of Paakuku, holding it, to present it to the Court for Probate, but the Court does not regard it, as compromising her title under the deed—She even presented the deed for Probate, but the Judge declined to admit it as it was not a Will.

It would not be equitable for the Court to declare that these parties compromise their rights by an error of this character, but in
172 this she did her duty—as to the personal property she would [however]* have done injustice to other parties, not to have presented the will for probate. The Counsel contend further that the pretended deed of gift of the 11th March 1868, is not without grave suspicions of its execution, and in its very terms is a fraud upon the other heirs and cannot affect their rights under the former will or instrument which became vested in the Executor thereof and confirmed by the Action of the Court in Probate. Fraud must be proved—suspicion is not sufficient. In this case the circumstances favor the validity of the deed—By the will executed in 1850, the Testator places the property in the hands of Defendant to be managed as she herself had hitherto done for the benefit of herself, brothers and sisters—Eighteen years had passed and it is very probable that the circumstances of the parties had changed, so that the Testator would deem it advisable to give her the title in full,—instead of imposing upon her the responsibility of taking care of the property for others, as well as herself. This relieves the case of suspicion even.

It does not appear by the record that there was any adjudication by the Probate Court of the rights of Parties to the real Estate. There was no notice for distribution and no decree of the Court to this effect. The administration was upon the personal property only.

The Court is of opinion that the Petitioners have no title to the lands Kaonoulu and Kaluapulu and so adjudge.

There is no controversy about the Title of the land in Wailuku

[* Word enclosed in brackets erased in copy.]

and the petition for partition of that land is hereby granted and decree accordingly.

ELISHA H. ALLEN,
Chief Justice of the Sup. Court.

R. H. Stanley & W. C. Jones for Complainants.
A. S. Hartwell for Paakuku.
S. B. Dole for the other defendants.

173 Endorsement: Supreme Court In Equity. E. 165 Kahoiwai, et al. vs. Paakuku, et al. Decision of Allen, C. J. Filed 3d October 1874 Jno. E. Barnard, Deputy Clerk.

174 KAHOIWAI et al.
vs.
PAAKUKU & Others.

Honolulu, Oct. 1st, 1874.

Bill of Costs.

Nov. 3 1871.	Fil'g & serv'g Bill 50¢ Order of Process & fil'g 1.25	1.75
	Summons & Stamps $6.00 Injunction & Stamps 6.00	12.00
	Service of 7 persons & Copies 7	45.50
	Copy of Injunction	5.00
" 30 "	Serv'g & fil'g answer of Wong Ko	.50
Dec. 8	" " " Komoikehuehu	.50
9	" " " Paakuku & Serv'g Inter'er	.75
	Request of Judge to hear cause (fil'g ditto).	.25
15	Order pro confesso of A. Roderick & fil'g	1.25
"	" discontinuing respondents &c"	1.25
	Fil'g copy of Letters of adm of Estate Keaka	.25
26 May 1873.	" replication	.25
6 June "	Master fee taking Evidence	5.00
4 Oct. "	Def't Subpœna & Stamp & Service	2.50
	Travelling fees	10.00
6 "	Masters' fee taking Evidence G. E. Miner	5.00
6 Nov. "	Fil'g record Probate Court	.25
12 Sep. 1874.	" Notice of Motion for hearing	.25
	" Briefs (3) all parties	.75
3 Oct. "	" Decision of Court	.25
	" Decree " " & order on decree.	1.25
1st Dec. 1871. Hearing 9 " " " 6 Nov. 1873. " 12 Sept. 1874. "		20.00
	Cont'd over	$114.50

175	Am't forwarded	$114.50
	Ent'g & rec. & Judgment of Court	2.00
Taxing Costs		1.00
		$117.50

Attorneys' Fees.

Answer.
Copy of Do.
Attendances.
Bill of Costs.

Nov. 6 1871. Rec'd of R. H. Stanley Counsel for Pl'ffs....		25.00
	117.50	
Execution Stamp & fil.	3.25	
Ent. Sat. & fil.	1.25	
		122.00
Att'y costs see bill		20.00
		142.00
June 3. Rec'd of Marshal Parke		117.00
		$25.00

being am't deposited on commencement of case.

Endorsement: E. 165. Kahoiwai et als. vs. Paakuku & others. Bill of Costs. Filed by —— ——, A. D. 187-. Walter R. Seal, Clerk Supreme Court. 12 October 1874.

176

Supreme Court.

In Equity.

KAHOIWAI & al.
vs.
PAAKUKU & al.

Bill of Costs of Defendants Wong Ko and Paakuku.

Drawing and filing answer of Wong Ko	$3.00
Same of Paakuku	3.00
Argument of cause	3.00
Paid Master for taking evidence	10.00
Bill of Costs	1.00
	$20.00

A. S. HARTWELL,
Counsel for Above-named Defendants.

Honolulu, Dec'r 31, 1874.

Paid A. S. Hartwell June 2nd 1875.
W. R. SEAL, *Clerk.*

Endorsement: E. 165. Supreme Court. In Equity. Kahoiwai & al. vs. Paakuku & al. Bill of Costs of Defendants Wong Ko and Paakuku, Hartwell, Att'y.

177 In the Supreme Court of the Kingdom of the Hawaiian Islands.

In Equity.

Before Hon. E. H. Allen, Chief Justice — Chancelor.

KAHOIWAI & al.
vs.
PAAKUKU & al.

Decree of Court.

It is ordered decreed and resolved by the Court here that the said Complainants take nothing by their Bill and that defendants have and *to* cover their costs herein incurred.

Honolulu, H. I., Oct. 12, 1874.

ELISHA H. ALLEN,
Ch. Jus. Sup. Court.

Endorsed: Supreme Court (In Equity). E. 165. Kahoiwai et al. vs. Paakuku et al. Decree. Filed 12 Oct., 1874. Jno. E. Barnard, Clerk.

178 Supreme Court of the Hawaiian Islands, 1st December, 1871.

OAHU, *ss:*

In the Matter of

KAHOIWAI (k) et al.
vs.
PAAKUKU et als.

Before Chief Justice Allen by Request of Mr. Justice Hartwell. At Chambers.

Nov. 6th. Bill in Equity filed by R. H. Stanley *by* Counsel for Complainants—asking for partition.

Summons and Injunction issued same day returnable on this day at 10 a. m.

Present:

R. H. Stanley, Counsel for Complainants.

A. F. Judd appears for Paakuku and Wong Ko and files answer of Wong Ko.

R. G. Davis appears for Komoikehuehu asks time to frame answer.

Mr. Judd asks to read answer of Wong Ko.
Mr. Stanley objects, Case continued till Saturday the 9th day December at 10 o'clock a. m.

WALTER R. SEAL, *Clerk.*

179 Case Continued.

Before Chief Justice Allen.

SATURDAY, December 9th, 1871.

Present:

R. H. Stanley, Counsel for Plaintiff-.
A. F. Judd, " " Paakuku & Wong Ko.
R. G. Davis, " " J. Komoekehuehu.

The answers of Paakuku and Komoikehuehu filed by counsel.
R. H. Stanley requested the Court to have the clerk note the non appearance of A. Roderick and that no answer is filed. The Court order it noted.
George E. Miner appears in persona and by R. H. Stanley makes motion that he be made a party complainant in this suit. The Court granted the motion same to be filed.
Motion made by R. H. Stanley, that Keoni Sniffen be made a party complainant motion granted.
On request of counsel case is contin'd till after 4 days' notice to opposite counsel and counsel agreeing the Court continued the case till further notice of counsel.

WALTER R. SEAL, *Clerk.*

180 Supreme Court, Honolulu, Nov. 6th, 1873.

In Equity.

Before Mr. Justice Hartwell.

KAHOIWAI et alii
vs.
PAAKUKU et alii

10 o'clock a. m.

On motion of Counsel case called *on* for hearing.

Present:

R. H. Stanley for Complainants.
A. F. Judd " Respondent Paakuku.

Mr. Stanley proceeds to read Bill of Complaint — order of Process.
Mr. Judd reads answer of Wong Ko also answer of Paakuku.
Mr. Komoekehuehu one of the defendants not being present—his answer filed Dec. 8th not read.

Mr. Judd presents Probate Record certified Sep., 1871.
Asks that the testimony recorded and taken before the Master on the 6th June and Oct. 9th, 1873, be admitted—Mr. Stanley says that Mr. Komo be present.
Case continued by consent. Notice of 48 hours be given to Counsel—and the Court.

WALTER R. SEAL, *Clerk.*

Endorsement: Supreme Court. In Probate. In the Matter of [the Estate of [* Kahoiwai k. et al. vs. *of* Paakuku et als. Proceedings 1st & 9th Dec., 1871.

181 Supreme Court, 6th June, 1873.

In Equity.

KAHOIWAI & Others
vs.
PAAKUKU & Others.

B. IOKAMA (k) sworn says:
I live in Makawao in the Island of Maui. I have lived there from my childhood. I knew a woman named Koleika Keaka. She is dead—I don't remember when she died.—I was present when Keaka signed a paper, it was at Kaonaulu, at a place called Kula, Maui—at Keaka's house. George Miner was there, I was there—Kanei (k) was there. George Miner wrote the paper (Counsel hands to witness the original, Exhibit "G"). This is the paper that Keaka left the property to Paakuku by. I wrote the name of B. Iotama, attached to it. George Miner held the pen and Keaka rested her hand on his while he wrote the name of Koleka Keaka and this is the name so made. Kanea also signed his name as a witness. This document was read by George Miner and I heard all the contents Keaka heard all the contents. Keaka was sick at the time, but was able to talk rationally. I don't know how long she had been sick, because I was sent for just at that moment. I don't know how long she lived afterwards, whether it was a few days or a week, it was not a month. I don't know what day it was signed. I don't remember. It was on the 11th March, 1868.

Cross-examined by Mr. Stanley:

Paakuku was there when it was signed, there were a good many others present but I don't remember now, Keaka (w) did not say it was a "Palapala Hooilina," or "Palapala Kauoha," but a "Palapala Hooilina Kuai." I was living at Kaonoulu teaching school at this time. I had been living in the District of Makawao before this, and afterwards I went back to Makawao. Keaka sent for me.
182 I knew it because Keaka knew that I was a school teacher and was to write the paper, but George Miner arrived before me and wrote it, and I became a witness.

[* Words enclosed in brackets erased in copy.]

(Mr. C. C. Harris here conducted the case on behalf of Respondents, Mr. Judd being forced to leave on business.)

Examination resumed:

When I got there George Miner had just begun to write. This is the only paper I saw signed that day. I was at Keaka's house about 2 hours. Keaka was a very old woman at this time. She was bowed with age. She was confined to her house and was feeble. I don't know the disease she died of. She could not read. She could — hear. She could see. She was not blind. She was not childish her speech was good. I did not know Hewahewa, he d[illegible] before I ever saw him. I think that George Miner and Kanei both signed their names. I did not see Kanei sign his name, but I was going out and I saw him sitting at the table, but did not see him sign. As soon as I had signed I went out, but I saw Kanei go and sit down at the table in the seat I had just left. I saw George Miner writing, I saw him writing the document, I was standing at the door when Keaka made her mark. I was standing at the door when the paper was read. I was standing there alone and George Miner and others that I don't recollect were inside. Keaka had been lying down but she was moved to the table to sign the document. She signed it on a book with a steel pen. I saw only one Inkstand. One of those common pyramid bottles. Kanei was living at Keaka's house. I am no relation of Keaka's I belong to Maui and she came from Hawaii.

KANEI, sworn says:

I belong to Lahaina I have lived in Lahaina the past few years knew a woman by the name of Keaka, she is now dead Saw her dead body and was present at her burial. She died at Kao-
183 naulu, Kula, Maui. I have forgotten what year she died, or the month. It may have been 6 or 7 years ago. I left Lahaina and went to this land to cultivate Potatoes and had been there 3 months when Keaka died. I lived at Keaka's house. I know of a paper being written by George Miner, in Keaka's house. George Miner and his wife and their children were there at the time and a man named Iokama. It was a paper made by Keaka leaving her land to her Keike mahine Paakuku who was there at that time. George Miner read the paper and I heard it. George Miner and Keaka said the land was for Paakuku, and then I signed my name as a witness. George Miner signed his name, and then I and Iokama signed. If the paper was shown to me I could identify the name that I wrote. The paper produced is the document. The last name on it is mine. I wrote it with my own hand. I can write a little, like that, but not much I think Keaka made the mark. I expect I made the cross attached to my name but I have forgotten about it. George Miner, Iokama, and I signed as witnesses. Keaka signed it first and we signed it afterwards. I did not see Keaka sign her name to it. I came back from my work in the middle of the day and signed it then. Keaka asked me to sign it. Keaka asked me to sign my name to the paper as a witness to the "Palapala Hooilina Kuai."

Cross-examined by Mr. Stanley:

I had come back to the house from my work when she asked me to sign it. It was 3 or 4 o'clock perhaps. I know George Miner wrote the paper because he read it to me and I signed it as I remember, it was a "Palapala Hooilina Kuai" Keaka told me that she had got George Miner to write the paper. Iokama was in the house when I was up there from my work. He was inside the house, at a part where they entertain people. He was sitting down
184 Iokama was there when George Miner read the paper to me. He was in the same room. Keaka was in the same room sitting up, not in the bed-room. She was ailing at the time but not very sick. She was a very old woman. The day after I signed the paper I went to Lahaina and got back in about a week and in a few days after she died. About a week after. I had been to work and when I got back the daughters told me she was dead. They were not George Miner's own children, but Sniffen's children. I have forgotten the names of all the people there. John Sniffen was there I don't remember whether John Smith was there at night or not. I can read a little. I know this is the paper because I see my hand writing that I made to it, and therefore I think this is the one. The paper was put on the table when I signed my name. I did not see Iokama sign it, he told me that he had signed it. I did not see any other paper signed at that time, there may have been.

By Mr. Judd: This is the only paper that I heard, or saw that day.

JNO. E. BARNARD, *Master.*

Endorsement: Supreme Court. In Equity. Kahoiwai et al. vs. Paakuku, et al. Copy evidence taken before the Master. $3.00. 6 June, 1873.

185 Supreme Court, 12 Septr., 1874.

In Equity.

Before Chief Justice Allen, at Chambers.

KAHOIWAI & Others
vs.
PAAKUKU et alii.

Bill of Partition.

R. H. Stanley & W. C. Jones for Complainants.

A. S. Hartwell for Pakuku.
Mr. Dole for the other defendants.

Mr. Jones said the proposition that he should argue would go to the whole merits of the case.
Mr. Jones read the Bill of Complaint.

Mr. Hartwell read the principal part of the answer.
Mr. Jones argued his case to the Court for the Complainants.
Mr. Hartwell argued contra.
Mr. Dole " for the other def'ts.
Mr. Jones replied.
Brief filed by Mr. Hartwell.
Briefs to be filed by Mr. Jones & Mr. Dole forthwith.

JNO. E. BARNARD,
Deputy Clerk Supreme Court.

Endorsement: Supreme Court. In Equity. Kahoiwai & others vs. Paakuku & others. Proceedings. 12 Sept. 1874.

186 Supreme Court of the Hawaiian Islands, 1st Oct'r, 1874.

OAHU, *ss:*

Before Chief Justice Allen, 12:30 P. M., at Chambers.

In the Matter of KAHOIWAI et als.
vs.
PAAKUKU (w) et als.

Chief Justice Allen renders his decision—which is filed.

Present:

R. H. Stanley, W. C. Jones, for plaintiffs.
A. S. Hartwell, for Respondent.

The opinion of the Court is that the Petitioners have no title to the lands of Kaonoulu and Kaluapulu and so adjudge.
There is no controversy about the title of the land at Wailuku and the petition for partition of that land is hereby granted and decreed accordingly.
Appeal noted by Plaintiff.

W. R. SEAL, *Clerk.*

187 Supreme Court.

In Equity.

Before Chief Justice Allen, at Chambers, 12 Oct'r, 1874.

KAHOIWAI et al.
vs.
PAAKUKU & alt.

Mr. R. H. Stanley for Complainants.
A. S. Hartwell for Defendants.

The Court order decree entered, and the Complainants submit themselves to the judgment of the Court and go no farther.

JNO. E. BARNARD,
Deputy Clerk.

Endorsements: Supreme Court. In Equity. Kahoiwai, et al. vs. Paakuku, et al. Proceedings. 12 October 1874. E. 165. Supreme Court. In Probate. In the Matter of the Estate [of]* Kahoiwai et als. vs. [of]* Paakuku et als. Proceedings and Decision of Court. From 1st Dec. 1871 till 12th October 1874.

188 To William C. Parke, Marshal of the Hawaiian Islands, Greeting:

You are commanded to levy upon the personal property of Kahoiwai and others, if any within your district, and if sufficient cannot be found, then upon his real property within said district, and given thirty days' previous notice, as required by law, to sell the same or so much thereof as may be found necessary, at public sale to the highest bidder, in order to satisfy a judgment entered against him in the Supreme Court of the Hawaiian Islands, on the 11th day of October A. D. 1874 at ten o'clock, in favor of Paakuku (w) and others, defendants in Suit in Equity Kahoiwai, et als. vs. Paakuku et al. for $117.00 One Hundred and Seventeen [Dollars,]* namely for costs of Court and [Dollars damages, and]* attorneys fees [Dollars costs];* collecting also the legal interest thereon, from the date thereof, and your costs, and the expenses of levy, advertisement and sale.

Make due return to me of this writ, with your proceedings thereon, and the money by you collected, on or before the expiration of sixty days. And hereof fail not at your peril.

Witness, the Honorable Elisha H. Allen, Chief Justice of the Supreme Court, at Honolulu, this 17th day of April, A. D. 1875.

[SEAL.] WALTER R. SEAL, *Clerk.*

Endorsement: E. 165. Kahoiwai and others vs. Paakuku et als. Execution for $117.00 11 o'c-k a. m. 17 April 1875. W. C. Parke, Esq. Collect within and return into Court. W. R. Seal, Clerk. Served 2 p. m. May 20/75 sold May 22/75 at 12 noon.

189 Served the foregoing execution and collected the sum of

Judgment	$117.00
Expenses of sale	12.85
	$129.85

and I hereby return this execution satisfied this 1st day of June 1875.

W. C. PARKE, *Marshal.*

To paid Clerk Supreme Court	$117.00
" " Expenses of sale	12.85
	$129.85
Balance in my hands subject to further order of Court	460.15

W. C. PARKE, *Marshal.*

[* Words enclosed in brackets erased in copy.]

190 In the Supreme Court of the Territory of Hawaii.

KAHOIWAI (k), PALAUOLELO (k), KAHOOHULI (w), and KANAINA (k), Her Husband; Kealopelapela Keohokii (k), Moeikauhane (w), and George Clark, Her H'*sua*b'd; Kaiwilei (k), Harriet Hapai and Akau Hapai, Her Husband; Esther Wilson and William Wilson, Her Husband; Elizabeth Sniffen Liloi and Liloi, Her Husband, Complainants,

versus

PAAKUKU (w), LILII SNIFFEN, LAIKI SNIFFEN, SAMUEL SNIFFEN, Noa Sniffen, Miner Sniffen, Keola Sniffen, and Namoomoo Sniffen, Minors, by George E. Miner, Their Guardian; Keoni Sniffen, Wong Ko, J. Komoikehuehu, and A. Roderick, Defendants.

Clerk's Certificate.

TERRITORY OF HAWAII,
City and County of Honolulu, ss:

I, J. A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii and custodian of the records and archives of said Supreme Court, do hereby certify that the foregoing documents and attached hereto consisting of 106 pages together with the endorsements thereon and enumerated hereunder, to wit:

Contents.	Pages.
1. Injunction directed to Wong Ko	1–2
2. Bill for Partition and annexed thereto as exhibits thereof are the following, viz: Exhibit "A" document entitled "Palapala Hooko" (award) to H. Hewahewa No. 3237 land of Koanaulu; Exhibit "B," document entitled "Palapala Hooko" (award) to H. Hewahewa No. 3237 land of Kaluapulu; Exhibit "C," deed Paakuku to John Ii, Exhibit "D," document entitled "Palapala Hooko" (award) to Hewahewa No. 3237 land at Wailuku; Exhibit "E," Will of Keaka in Hawaiian with an English translation thereof attached thereto; Exhibit "F," lease between Paakuku and Wong Ko; Exhibit "G," Will of John Ii, and Exhibit "H," deed J. Komoikehuehu to A. Roderick.	33–37
3. Summons and Return of service by W. C. Parke, Marshal	38–39
4. Order for Process	40–42
5. Request from Judge Hartwell to Chief Justice to hear cause	43
6. Answer of Wong Ko	44–47
7. Answer of J. Komoikehuehu	48–52
8. Answer of Paakuku and annexed thereto as exhibits thereof are the following, viz: Exhibit "G," document entitled "Palapala Haawi" executed by Keaka and Exhibit "H," document entitled "Palapala Hooilina executed by Keaka	53–65

9. Order discontinuing against certain defendants..... 66
10. Order pro confesso as to A. Roderick..... 67
11. Replication 68–69

191 Contents. Pages.

12. Evidence of B. Iokama and Kanei taken before the Master on June 6, 1873, and included as Exhibit "G" thereof is copy of document entitled "Palapala Haawi" by Keaka 70–77
13. Evidence of Geo. E. Miner taken before the Master on Oct. 6, 1873 78–79
14. Proceedings and documents in the Matter of the Estate of Keaka (w) of Makawao, from the records of the Second Judicial District and consisting of the following, to wit: (1) Petition of J. Porter Green for the appointment of an administrator for the Estate of Koleka Keaka, deceased, (2) Notes of proceedings re appointment of administrator of the Estate of Keaka (w), (3) document entitled "Palapala Hooilina" (in Hawaiian) executed by Keaka and dated March 11, 1868 and (4) document entitled "Palapala Haawi" executed by Koleka Keaka (in Hawaiian)..... 80–85
15. Notice of motion for hearing..... 86
16. Decision of Chief Justice Allen..... 87–90
17. Plaintiffs' bill of costs..... 91–92
18. Bill of costs of Wong Ko and Paakuku..... 93
19. Decree 94
20. Minutes of the Clerk of the proceedings had in the above entitled cause under dates to wit: Dec. 1, 1871, Dec. 9, 1871, Nov. 6, 1873, Sept. 12, 1874, Oct. 1, 1874, Oct. 12, 1874, and included therein as part thereof is copy of the evidence of B. Iokama and Kanei taken before the Master under date, to wit: June 6, 1873, and 95–104
21. Execution dated April 17, 1875, and return of W. C. Parke, Marshal annexed thereto.....105–106

are full true and correct copies of each of the originals thereof which are now on file in the Clerk's Office of said Supreme Court in the foregoing entitled cause (Number 165 Equity).

Witness my hand and the Seal of said Supreme Court at Honolulu, City and County of Honolulu, this 10th day of August, A. D. 1910.

[SEAL.] J. A. THOMPSON,
Clerk Supreme Court, Territory of Hawaii.

Endorsements: L. 7566 Reg. 4 Pg. 30. Number 165 Equity Division Supreme Court. Kahoiwai et al., vs. Paakuku, et al. Certified Transcript of Record. Law No. 7566 Reg. 4/30 Defendant's Exhibit 1 Filed May 21st 1913 Job Batchelor, Clerk. No. 734 Received & filed in the Supreme Court Nov. 12, 1913, at 10:18 A. M. J. A. Thompson, Clerk. Entered in Docket Vol. — Page —, Record Vol. — Page —, —— ——, Clerk.

192 In the Circuit Court of the First Circuit, January Term, 1913.

HENRY C. HAPAI et al., Plaintiff,
vs.
MAY K. BROWN et al., Defendants.

Action to Quiet Title; Jury Waived.

Decision.

This is the second trial of the above-entitled action to quiet title, jury being waived.

Plaintiffs claim an undivided interest in the land in question by purchase and inheritance, the extent of that interest not being determined, and defendants claim the entire land.

Plaintiffs' claim is through the children of one Keaka other than Paakuku, a daughter, and defendants' claim under and through said Paakuku.

After plaintiffs rested defendants first introduced a certified copy of the record in Kahoiwai et al. v. Paakuku et al., being Equity No. 165, and reported in 6 Haw., 124.

In that case the predecessors of two of the plaintiffs, Henry C. Hapai and G. W. A. Hapai, and the other plaintiff, Nelson K. Sniffen, referred to therein as Keola Sniffen, were parties, and it was held Paakuku owned the land, which is the same as is in-
193 volved in this action, and that none of the other parties had any interest in it.

That adjudication, in my opinion, is binding on plaintiffs in this action.

Defendants also offered to prove, as separate and distinct defenses, a paper title to the land in dispute and also a title to same by prescription, that is, by adverse possession. These offers were refused and those other defenses were not gone into for the reason that, in my opinion, the former adjudication referred to is conclusive of the case and settles the question.

I therefore order judgment to be entered for defendants.

Dated May 24, 1913.

(S.) HENRY E. COOPER,
First Judge, First Circuit Court.

Endorsed: L. 7566. Reg. 4/31 Circuit Court, First Circuit, Territory of Hawaii. Henry C. Hapai et al., Plaintiffs, vs. May K. Brown et al., Defendants. Decision. Filed May 24th, 1913 9:54 A. M. (S.) Job Batchelor, Clerk.

194 In the Circuit Court of the First Circuit, Territory of Hawaii, January, 1913, Term.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, Defendants.

Action to Quiet Title; Jury Waived.

Judgment.

This action by an amended complaint claiming a fee simple title to 29/36 of a certain piece of land situate at Kula, Island and County of Maui, Territory of Hawaii, known as the Ahupuaa of Kaonoulu, being a portion of the land described in Land Commission Award 3237 to Hewahewa, and more particularly described in plaintiffs' complaint, came to the present term, when the parties appeared and were at issue to the court, jury being waived.

The court, having heard the parties, finds for the defendants.

Therefore it is adjudged that the defendants recover of the
195 plaintiffs their costs, taxed at $206.70.

(S.) HENRY E. COOPER,
First Judge Circuit Court, First Circuit.

Entered this 29th day of May, 1913, as of the January 1913 Term.
(S.) JOB BATCHELOR, *Clerk.*

Endorsed: L. 7566. Reg. 4. Pg. 31. Circuit Court, First Circuit, Territory of Hawaii. Henry C. Hapai et al., plaintiffs, vs. May K. Brown et al., Defendants. Judgment. Filed May 27, 1913 at 2:10 o'clock P. M. (S.) J. A. Dominis, Clerk. Thompson, Wilder, Watson & Lymer, 3-11 Campbell Block, Honolulu, Attorneys for Defendants.

196 In the Supreme Court of the Territory of Hawaii, January Term, September Session, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Petition for Writ of Error.

$2.00 Stamps.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the Territory of Hawaii:

The petition of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, the plaintiffs in error above named, respectfully shows unto this Honorable Court as follows, to wit:

That heretofore and on or about the 7th day of June, 1911, the plaintiffs in error brought their action against May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert Atkinson, and Henry Waterhouse Trust Company, Limited, a corporation, defendants in error, in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, to quiet the title to certain lands situate on the Island of Maui, Territory of Hawaii;

That thereafter, and on, to-wit, the 20th and 21st days of May, 1913, said cause came on regularly and duly for trial in said Circuit Court before the Honorable Henry E. Cooper, First
197 Judge of the Circuit Court of the First Judicial Circuit, sitting without a jury.

That after hearing the evidence adduced on the part of plaintiffs in error, said court granted judgment for the defendants in error, together with the costs of the action;

That six months have not elapsed since said judgment was rendered, entered and recorded and that said judgment is unpaid and has not been satisfied, either in whole or in part.

That plaintiffs in error feel aggrieved by the said judgment and say that in the proceedings prior to judgment and during the trial and at the trial and by the judgment of the court many errors of law were committed by the said Circuit Court to the prejudice of the plaintiffs in error, an assignment whereof is herewith presented and filed, and they ask and pray that the proceedings in said cause, as shown by the record, pleadings, minutes of the clerk, exhibits and the evidence recorded by the official stenographer of the said court be inquired into and reviewed by this Honorable Court in connection with this petition.

Wherefore, your petitioners pray that a Writ of Error may issue

out of this court addressed to the clerk of the said Circuit Court of the First Judicial Circuit, Territory of Hawaii, commanding him, the said clerk, to send up to this Honorable Court all and singular the record in said described and mentioned action at law to the end that the errors existing in the record may be corrected, and petitioners further pray that said errors may be by this Honorable Court corrected, the said verdict set aside, the judgment reversed and a new trial ordered and full and complete justice may be done in the premises.

HENRY C. HAPAI AND
G. W. A. HAPAI,
By LORRIN ANDREWS,
Their Attorney.
NELSON K. SNIFFEN,
By R. P. QUARLES,
His Attorney.

Dated, Honolulu, T. H., September 5, 1913.

ANDREWS & QUARLES,
Honolulu, T. H., Attorneys for Plaintiffs in Error.

198 TERRITORY OF HAWAII,
City and County of Honolulu, ss:

Henry C. Hapai, one of the petitioners above named, for himself and on behalf of the other plaintiffs in error herein, being first duly sworn, deposes and says: That he is one of the plaintiffs in error named above; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

(Signed) HENRY C. HAPAI.

Subscribed and sworn to before me this 5th day of September, 1913.

(Signed) S. K. KAMAIOPILI,
[SEAL.] *Notary Public, First Judicial Circuit.*

Endorsed: Rec'd $25.00. Filed September 6, 1913 at 9 a. m. (Signed) J. A. Thompson, Clerk.

199 In the Supreme Court of the Territory of Hawaii, January Term, September Session, 1913.

HENRY C. HAPAI, G. W. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE WALKER, JOHN WALKER, Her Husband; WALTER F. DILLINGHAM, ROBERT W. ATKINSON, and HENRY WATERHOUSE TRUST COMPANY, LIMITED, a Corporation, Defendants in Error.

Plaintiffs' Assignments of Error.

Come now the Plaintiffs in Error, Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, by their counsel, Andrews & Quarles, and assign errors committed by the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, at the last trial of the above-entitled cause in May, 1913, to the prejudice of the plaintiffs in error during the progress of the case and in the determination, and to which plaintiffs duly excepted, as follows, to wit:

I.

The Court erred in admitting in evidence for the purpose of showing a former adjudication of the issues in the case Defendants' Exhibit 1, the same being a copy of the record in the Equity
200 proceeding between Kahoiwai and others named as complainants, and Paakuku and others named as defendants, No. 165 in the Equity Division of the Supreme Court, for the partition of the lands which are the subject matter of this action, the admission of the same in evidence for such purpose, being error, objected and excepted to by the plaintiffs, for the following reasons, namely:

a. The said decree in the said Equity proceeding, or, suit, was without jurisdiction in the Hon. Elisha H. Allen, as Chief Justice at Chambers, to make and render, the said Equity suit or proceeding being for purely equitable purposes, as shown by the said Exhibit 1, and in same the said Chief Justice, at Chambers, had no power, jurisdiction or authority to adjudicate a disputed legal title to the lands in controversy.

b. The said Exhibit 1 was not competent nor material nor relevant to prove any issue in the case, the said adjudication being without authority and void.

c. The said Exhibit 1 was not competent to prove the execution, and delivery by Keaka to Paakuku in the year 1868, of a deed conveying to said Paakuku the lands in question in this case, the same being secondary evidence and objected to by the plaintiffs on that ground.

II.

The Court erred in refusing to permit the plaintiffs, after the defendants had closed their case, to introduce in evidence, the record of

a power of attorney executed February 11th, 1875, by Paakuku to K. P. Eldridge, Jr., recorded in Liber 44 at page 183, and in the following words, to wit:

"Stamped.

Eike auanei na kanaka a pau, Owau o L. Paakupu no Kaonoulu Kula Maui ko Hawaii Pae Aina, ua hana ua hookohu, a ua koho a ma keia palapala ua hana ua hookohu aku au ia David P. Eldridge Jr., o Honolulu, Oahu i hope ponoi no'u a ma o'u nei a ma ko'u inoa e hana a e hoonoho a e lawelawe ma na pono ponoi o na waiwai paa a me na waiwai lewa a pau no loko o ka waiwai o Keaka i make aku nei. A oia mau mea ke waiho nei iloko o ko Hawaii nei Pae Aina a e hoolimalima aku ina waiwai paa no ka uku hoolimalima maikai a e kuai a hoolilo aku paha ina waiwai lewa a e hana a e hoopaa ina hoolimalima ma kuu inoa no ka pono a me ka pomaikai ma o na waiwai paa a e haawi i mau palapala kuai no na waiwai lewa a e lawe a e hana ina mana a pau o na pono ponoi o kela a me keia waiwai paa ame waiwai lewa, oiai no'u a no'u ponoi na mea a pau o Keaka i make aku nei i hana ia ma kona palapala hooilina a hooko kauoha hope.

201 A e haawi ia ana ma ka lima o kuu hope i olelo ia ka mana nui e hana aku ai no kela a me keia mea ma na mea e pili ana ina waiwai, a iaia ka mana hooponopono ina loaa apau e like me ka'u e hoike nei ma keia palapala me ka mana nui i haawi ia iaia.

A ma keia, o na mea a pau a kuu hope i hana a haawi paha, e lilo no imea oiaio ke ae a i ole ua hana paha e like me heia i hoike ia.

I hoike no keia ke kau nei au i ko'u inoa me ka hoopili mai i ko'u sila i kaia la 11° Feb., A. D. 1875.

Kona
L. PAA X KUKU
Kaha

IKE MAKA
JOHN H. PATY.

HAWAIIAN ISLANDS,
Island of Oahu, ss:

On this tenth day of February A. D. 1875 before me personally appeared L. Paakuku, known to me to be the person described in and who executed the annexed instrument, and who acknowledged that she executed the same for the uses and purposes therein set forth.

JOHN H. PATY,
Notary Public.

Recorded & Compared this 6th day of December, A. D. 1875, at 11 o'clock A. M.

THOMAS BROWN,
Registrar of Conveyances.

Office of the Registrar of Conveyances.

HONOLULU, T. H., February 8, 1910.

The foregoing is a true copy of record, recorded in the office of the Registrar of Conveyances of the Territory of Hawaii in Book 44 on pages 183 and 184.

Attest:

[SEAL.] CHAS. H. MERRIAM,
Registrar of Conveyances for the Territory of Hawaii.

202 The said record of said power of attorney was competent, material and relevant as evidence on behalf of the plaintiffs to show that said Paakuku after said adjudication, and presumably upon the ground that such adjudication was void, claimed not through such adjudication, but solely under the will of Keaka, and was admissible for the purpose of establishing an estoppel against the defendants in this case from claiming under the said adjudication.

III.

The Court erred in holding that the said Exhibit 1 proved an adjudication and determination of the title to the lands in controversy in favor of the predecessor of the defendant, and that same was, and is, binding on the plaintiffs in error, for the reasons given in the first assignment of error herein.

IV.

The Court erred in refusing to permit plaintiffs to introduce in evidence Probate Record 1022, Vol. 13, Vol. 539, the same being the record of the probate of the will of Paakuku in the year of 1876, with all papers relating thereto, including contest by some of the brothers and sisters of Paakuku to the probating of the will on the ground that Paakuku lived and died on the Island of Maui, and that she did not own all of the land which she had attempted to will, but only owned an undivided interest in it with her said brothers and sisters. Said Probate Record was offered by the plaintiffs to show that the said adjudication was not regarded by the devisees of Kekaka as binding, and in conjunction with the said power of attorney to D. P. Eldridge Jr. from Paakuku, to show that said Paakuku did not consider the said adjudication in the partition suit as binding, and did not rely on same, and said Record should have been received in rebuttal of the estoppel claimed by defendants, and its rejection was error prejudicial to the plaintiffs.

203 V.

The Court erred in holding that the said adjudication by the Hon. Elisha H. Allen, Chief Justice, at Chambers, was a final adjudication of the legal title in Paakuku, and in holding that the same is binding on the plaintiffs, and precludes them from a judgment quieting their title to undivided interests in the lands in con-

troversy, to the prejudice of the plaintiffs, to all of which the plaintiffs duly excepted.

And for and on account of said errors, assigned above, the plaintiffs in error pray that all the proceedings in said action be, by this Honorable Cout, reviewed; and that said judgment and decision of the said Circuit Court be set aside, and such orders and judgment be entered herein as to this Honorable Court may seem meet and proper.

HENRY HAPAI,
G. W. A. HAPAI,
NELSON K. SNIFFEN,
Plaintiffs in Error,
By ANDREWS & QUARLES,
Attorneys for Plaintiffs in Error.

Endorsed: Filed September 6, 1913, at 9 a. m. (Signed) J. A. Thompson, Clerk.

204 (Section 1452, Civil Laws, Page 556.)

$2.00 Stamps.

In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN,
Plaintiffs in Error,
v.
MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Writ of Error.

THE TERRITORY OF HAWAII:

To Job Batchelor, Esquire, Clerk Circuit Court, First Judicial Circuit:

Whereas, in an action lately pending before the Circuit Court of the First Circuit, in which the said Henry Hapai, G. W. A. Hapai and Nelson K. Sniffen were plaintiffs, and the said May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a corporation were defendants, error is alleged to have occurred as appears by the assignment of errors on file in this Court, you are commanded forthwith to send up to this Court the record and the exhibits filed in said proceedings.

Witness, the Hon. A. G. M. Robertson, Chief Justice of the Su-

preme Court, at Honolulu, Territory of Hawaii, this 6th day of September 1913.

By the Court:

(Signed) J. A. THOMPSON,
Clerk Supreme Court.

Received the foregoing Writ of Error on this 6th day of September 1913, at the hour of 9:30 A. M.

(Signed) JOB BATCHELOR,
Clerk Circuit Court, 1st Circuit.

In obedience to the within writ to me directed, I herewith send up the record and all the exhibits filed in said above mentioned cause.

[SEAL.] (Signed) JOB BATCHELOR,
Clerk Circuit Court, First Circuit.

Dated September 15th, 1913.

[Endorsed:] No. 734. Supreme Court, Territory of Hawaii. Henry Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, v. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, Defendants in Error. Writ of Error. Issued at 9 o'clock A. M. Sept. 6, 1913. (Signed) J. A. Thompson, Clerk. Returned at 10:20 o'clock A. M. Sept. 15, 1913. (Signed) J. A. Thompson, Clerk.

205 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN

v.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation.

Error to Circuit Court, First Circuit.

Argued November 13, 1913. Decided November 29, 1913.

Robertson, C. J.; Perry, J., and Circuit Judge Robinson in Place of De Bolt, J.

Judgments—construction—reference to other parts of record.

If from the decree in a cause there be uncertainty as to what was really decided, resort may be had to the pleadings, the testimony, the findings and the opinion of the court.

Id.—decree in partition—adjudication of title.
Examined in the light of the pleadings, the evidence and the opinion of the court, a decree that the complainants in a suit in equity for partition "take nothing by the bill" is held to have been an adjudication that the petitioners had no title to certain land sought to be partitioned.

Id.—res judicata—determination of title in equity suit for partition.
The determination of the title to real estate by a court of equity in a suit for partition, made without objection by any of the parties and not appealed from, is valid and binding upon the same parties and their privies in a subsequent action involving the same land.

206 *Opinion of the Court by Perry, J.*

In a statutory action to quiet title to the ahupuaa of Kaonoulu on the Island of Maui instituted by the present plaintiffs in error the plaintiffs claimed certain undivided interests under the will of one Keaka. The trial court held that under the will the whole ahupuaa was devised in fee to one Paakuku under whom the defendants, now defendants in error, claim. On appeal this ruling was reversed, this court holding that the devise was to Paakuku and her brothers and sisters (the plaintiffs claiming under the brothers and sisters) as tenants in common. Ante, p. 499. Further proceedings were then had in the trial court. It was stipulated, as at the former trial, that "the plaintiffs claim title to the land described in the complaint herein through and under the children of Keaka, the sister of Hewahewa, the original awardee of the land in question, other than the daughter of said Keaka, namely, Paakuku, and that defendants claim title to said land through and under said Paakuku." The will of Keaka, dated February 12, 1850, was proven and evidence was introduced tending to show that by descent and by mesne conveyances the interests of the brothers and sisters of Paakuku had become vested in the plaintiffs. The defendants then announced that they claimed title to the whole land, first by virtue of a former judicial adjudication, second by descent and mesne conveyances and third by adverse possession and in support of their first defense offered in evidence a certified copy of the records of the supreme court in the case entitled Kahoiwai et al. v. Paakuku et al. including as a part thereof a certified copy of a deed from Keaka to Paakuku dated March 11, 1868, purporting to convey the whole ahupuaa. The evidence was received against the objection of the plaintiffs. The defendants offered to introduce proof of their other defenses but the court, being of the opinion that the claim of res judicata had been sustained, declined to receive it. In rebuttal the plaintiffs offered, and the
207 court refused to receive, Probate Record # 1022, relating to the will of Paakuku, and a power of attorney by Paakuku to one D. P. Eldredge, dated February 11, 1875, both of which will be referred to later. Judgment was for the defendants.

The main question presented by the assignments of error is whether the defense of res judicata was successfully established.

The suit in equity was instituted in November 1871. In their bill the complainants alleged that Keaka died on March 17, 1868, seized of the ahupuaa of Kaonoulu and other property mentioned; that complainants were children and heirs of deceased children of Keaka and that defendant Paakuku was likewise a daughter of Keaka; that after Keaka's death Paakuku went into possession of the ahupuaa jointly with the complainants and had continued in such joint possession until the filing of the bill, save as to a portion of the land which was sold by Paakuku; that on February 12, 1850, Keaka made a will which was admitted to probate on December 15, 1868; that by said will Keaka devised all her property "to all her heirs in common * * * and the said defendant Paakuku was made a quasi trustee of said estate, to hold it only for the use and benefit of all the heirs of the said Keaka"; that "regardless of the said trust" and without the consent of the complainants Paakuku on November 10, 1869, sold certain portions of the land so devised; that Paakuku had collected rents for the ahupuaa and had failed to account for them or for the proceeds of the sale of the land; that Paakuku had executed to one Wong Ko a lease of the ahupuaa "in fraud of the rights of" the complainants; that Wong Ko was "committing great waste and destruction upon the trees, timber, saplings and firewood growing" on the ahupuaa by cutting them and was thereby causing irreparable injury to the inheritance; that Wong Ko and Paakuku were "not able pecuniarily to respond in damages"; and that Paakuku had been "guilty of a breach of trust." The claim was set up in the bill that the plaintiffs and Paakuku were, with others, tenants in common of the ahupuaa under the will of Keaka.
208 The prayer was that Paakuku be compelled to render an account of the rents and other moneys received by her from the land, that the acts of waste be enjoined, that a partition be ordered of all of the lands devised under the will of Keaka and that the deed and the lease executed by Paakuku be cancelled "so far as the respective shares" of the complainants "are concerned." Paakuku in her answer, while admitting the execution and probate of the will of Keaka, alleged that on March 11, 1868, Keaka "being moved thereto by love and affection and for the consideration of the sum of five dollars to her paid" executed and delivered to Paakuku a deed whereby she conveyed absolutely to her the land of Kaonoulu and other lands, and that "by virtue of the said instrument the title in the said lands vested in her absolutely for herself, her heirs and assigns forever"; denied that any of the complainants had ever had possession of any of the lands; claimed "the truth to be that from the time of" the deed "up to the present time, this defendant has held undisputed possession of the ahupuaa" and that certain of the complainants had resided on the land only by her permission; that the will "had no effect as regards this defendant touching the lands of Kaonoulu * * * by reason of the subsequent deed" of Keaka; and denied specifically the existence of any tenancy in common with the complainants.

On June 6 and October 6, 1873, evidence was taken before a master, evidently by consent of the parties, relating to the execution of the deed of Keaka on March 11, 1868, the grantor's physical and mental condition at the time and the other surrounding circumstances. At a hearing before the court on November 6, 1873, the attorney for Paakuku "asks that the testimony recorded and taken before the Master on the 6th of June and October 9th, 1873, be admitted." The minutes are silent as to any objection to the request and the transcript was presumably received for there are indications in the opinion of the court subsequently filed that the evi-
209 dence was considered. Under date of October 1, 1874, the following minute appears: "The opinion of the court is that the petitioners have no title to the lands of Kaonoulu and Kaluapulu and so adjudge. There is no controversy about the title of the land at Wailuku and the petition for partition of that land is hereby granted and decreed accordingly." Two days later Chief Justice Allen filed his written opinion concluding in the words just quoted from the minutes and stating at length his reasons for his conclusion. On October 12, 1874, "the court order decree entered" and on the same day a decree, signed by the chief justice, was entered reading thus: "It is ordered, decreed and resolved by the court here that the said complainants take nothing by their Bill and that the defendants have and *to* cover their costs herein incurred."

On behalf of the plaintiffs in error it is contended that the decree does not on its face contain any adjudication that the complainants in the equity suit had no title and that it should be regarded as a dismissal of the bill on the ground of lack of jurisdiction to determine the issue of title; and further that in aid of its interpretation the remainder of the record cannot be referred to. It is now too well settled, however, to admit of doubt that if upon a plea of res judicata the judgment relied upon *upon* as constituting the former adjudication does not of itself declare with certainty the precise scope of the matters adjudged, resort may be had, in aid of its interpretation in this respect, to the pleadings, the opinion of the trial court, the findings of fact and the testimony. "It not being certain" from the decree "which was the precise point determined resort may be had to the proceedings to ascertain which of the two points was determined." Rawlins v. Honolulu Soap Works, 9 Haw. 496, 501, 502. In that case "the proceedings and the decision" in the former action were examined for the purpose stated. So, also, in George v. Holt, 9 Haw. 47, 48, the declaration, the answer and the transcript of
210 the evidence were resorted to; and in Polapola v. Carr, 9 Haw. 466, 467, and Nakookoo v. Noholoa, 19 Haw. 679, the opinions furnished the necessary light. "It is elementary that if from the decree in a cause there be uncertainty as to what was really decided, resort may be had to the pleadings and to the opinion of the court in order to throw light upon the subject." National Foundry v. Oconto Water Supply Co., 183 U. S. 216, 234. "The elementary rule is that for the purpose of ascertaining the subject matter of a controversy, and fixing the scope of the thing adjudged, the entire record, including the testimony offered in the suit, may be

examined." Washington Gas Co. v. District of Columbia, 161 U. S. 316, 329. The findings of fact by a trial court "even if not conclusive as against all testimony, are certainly very persuasive evidence of what the court did in fact decide." Last Chance Mining Co. v. Tyler Mining Co., 157 U. S. 683, 690. To the same effect are Yates v. Utica Bank, 206 U. S. 181, 183, 184; Burthe v. Denis, 133 U. S. 514, 522; Russel v. Place, 94 U. S. 606; Davis v. Brown, Ib. 423; Hornbuckle v. Stafford, 111 U. S. 389, 393; Freeman on Judgments, § 273; and 23 Cyc. 1537 et seq.

Reference to the remainder of the record leaves no doubt that it was adjudged in the equity suit that the complainants, the predecessors in interest of the present plaintiffs in error, had no title to the ahupuaa of Kaonoulu. The pleadings presented the issue as to the execution and the validity of the deed and as to the relative force and effect of the will and the deed. Evidence was taken as to the fact and the circumstances surrounding the execution of the deed. An examination of the written opinion shows clearly that the court found that the deed had been executed and delivered as alleged and that its execution was free from suspicion and ruled as matter of
211 law that the deed was operative as a conveyance of the ahupuaa to Paakuku alone, that the will was not operative as a devise to Paakuku and her brothers and sisters and that, for these reasons, the complainants had no title. Chief Justice Alleb, after reciting (6 Haw. 124) the substance of the pleadings and recognizing that the complainants claimed under the will and the respondent Paakuku under the deed and that "it was undoubtedly the intent of the testator that they" (Paakuku and her brothers and sisters) "should all have an interest in the property" (under the will), held that "a testator has a right to make or cancel it" (a will) "and there is no right which vests by it which disables the testator during her life from making a conveyance by deed," and that the presentation by Paakuku of the will for probate did not preclude her "from claiming under a different instrument." Referring to the complainants' contention that "the pretended deed of gift of the 11th of March, 1868, is not without grave suspicions of its execution and in its very terms is a fraud upon the other heirs," the court said that "fraud must be proved—suspicion is not sufficient" and that "in this case the circumstances favor the validity of the deed." The conclusion that "the petitioners have no title" to the land of Kaonoulu followed logically from these findings and rulings. And so did the decree that the "complainants take nothing." We find nothing in the record to support the view that the decree constituted merely a dismissal for lack of jurisdiction.

It is further contended that a court of equity is wholly without jurisdiction to try the title to real estate and that Chief Justice Allen's decree was consequently void. This objection is raised now for the first time. It was not raised in the equity suit. On the contrary, the trial and the determination of the issue of title was with the consent of the parties. Under the circumstances the
212 objection to a trial of the title by the court of equity must now be deemed to have been waived. In Kuala v. Kuapahi,

15 Haw. 300, a suit in equity to quiet title where the entire controversy turned on the issue of adverse possession, this court held that "the mere fact that the title had not first been adjudicated at law cannot avail the defendant" and said: "It seems to be pretty well settled that, as it is variously expressed, although neither consent nor negligence will confer jurisdiction in equity where none really exists, yet, when the case is not wholly foreign to equity jurisdiction, when it is not on its face such that equity could have no jurisdiction over it, as, for example, an action to recover damages for an assault, or for a libel or a slander, when the defect is a want of equity and not a want of power, when the objection is merely that a plain, adequate and complete remedy at law exists or that equity is without jurisdiction in the particular case merely for some special reason or the absence of some particular element, when equity is competent to grant the relief sought and has jurisdiction of the subject matter, when the case is not without traces of equity jurisdiction, the question of the alleged want of jurisdiction may be waived and will be deemed to have been waived if not raised until the case comes to the appellate court." In support of this statement of the law were cited several decisions, mainly from the Supreme Court of the United States, to which list may now be added the later case of Beyer v. Le Fevre, 186 U. S. 114, 118. The decision in Kuala v. Kuapahi supra has not been overruled in Ahin v. Opele, 17 Haw. 525, Kaneohe Rice Mill Co. v. Holi, 20 Haw. 609, or Brown v. Davis, ante, 327, cited for the plaintiffs. In none of these cases was the objection waived in the trial court. In none of them is there any indication of any intention to overrule the Kuala case. In Mill Co. v. Holi the principle of the Kuala case is expressly recog-
213 nized but held to be inapplicable. Some of the expressions in Brown v. Davis might, perhaps, if read alone be construed as a ruling that there is no inherent jurisdiction in equity to try the title to real estate but read with the remainder of the opinion and with reference to the facts then before the court it is obvious that the court did not intend to so rule. In that case, a suit for partition, the trial judge declined to grant a hearing until the title should be determined at law and this court affirmed the order appealed from. The effect of a waiver in the trial court was not considered and was not an issue in the case and the Kuala decision was not even referred to.

The equity case tried before Chief Justice Allen was not purely an ejectment bill. The complainants alleged that they were in possession, jointly with Paakuku, the latter claimed that such of the complainants as were residing on the land were there by her permission and the court made no express finding on the subject. The inference, if any need be resorted to, must be, in support of the validity and regularity of the proceedings, that the court found that the complainants were in possession. The suit was far from being "without traces of equity jurisdiction." It was alleged that Paakuku was a trustee, that she had committed a breach of the trust and that she had committed and suffered waste, and discovery and an accounting from her, an injunction against waste, and a partition of

the lands were prayed for. The case was not "wholly foreign to equity jurisdiction." It was not "on its face such that equity could have no jurisdiction over it," but on the contrary presented on its face familiar subjects of jurisdiction in equity. Even if interposed in limine the objection could have been at most that equity was "without jurisdiction in the particular case merely for some special reason or the absence of some particular element," namely a prior adjudication at law of one only of the many
214 issues involved. Moreover, it is inexact to say that there is any inherent want of power in a court of equity to determine an issue of title to land. "The determination of title to real estate is within the scope of the general jurisdiction of a court of equity." Beyer v. Le Fevre, supra "I may observe that the question which I have decided is one of law and not of equity, and that a partition suit being an exercise by the Court of administrative rather than contentious jurisdiction, it might not have been right that I should have dealt with it if any one objected. But no one did object, in fact; and I think that, under the circumstances, I do not go beyond the limits of *amy* proper jurisdiction, and that I do what is best for the parties, by now deciding the case." Burt v. Hellyar, L. R. 14 Eq. 160, 166. See also 30 Cyc. 244; 16 Cyc. 128, 129; Freeman, Cotenancy & Partition, § 502, and Bispham, Prin. of Eq., § 489. "The reason for remitting the investigation to a common law court is one of policy and fitness, rather than of any inherent want of power in a court of equity; and hence, if chancery decides, and there is no reversal in a proceeding directed to that end, the result is not void, but must stand and be respected." Wallace v. Harris, 32 Mich. 379, 389. Another reason is that each of the parties concerned is entitled to a trial by a jury on the issue of title. Whitehead v. Shattuck, 138 U. S. 146, 151. It is likewise competent, however, for each of the parties to waive this right.

The record in the equity suit was properly admitted in evidence and shows a valid, former adjudication that the predecessors in interest of the present plaintiffs in error derived no title under the will of Keaka to the land described in the declaration in the case at bar. That adjudication is binding as against the plaintiffs in error and in favor of the defendants in error. H. C. & S. Co. v. Wailuku S. Co., 14 Haw. 50.

215 In the power of attorney (February, 1875) offered in evidence by plaintiffs Paakuku is claimed to have recited that she took the land under the will of Keaka. There was no offer to prove that any one acted in reliance upon the declaration, if it was made, or was misled by it. The instrument alone did not tend to prove an estoppel. Probate Record # 1022. In re Estate of Paakuku, was offered by plaintiffs "for the purpose of showing that in 1876 the children of Keaka did not regard the determination of the partition suit as decisive of their rights in the land in controversy and * * * all regarded the partition suit and determination thereof as of no binding force whatever." It is not claimed that in Probate Case # 1022 any adjudication was had of the rights now under consideration. "The proceeding," it was stated in the offer of the

record, "was never decided * * * and is still in abeyance." The views entertained by the children of Keaka concerning the validity and effect of the decree of 1874 would not, of themselves, affect the validity or effect of the decree.

The assignments of error are not sustained. The judgment is affirmed.

A. G. M. ROBERTSON.
ANTONIO PERRY.
W. J. ROBINSON.

L. Andrews, for H. C. Hapai and G. W. A. Hapai.
R. P. Quarles, for N. K. Sniffen.
A. A. Wilder (Thompson, Wilder, Watson & Lymer on the Brief), for Defendants in Error.

Endorsed: No. 734. Supreme Court, Territory of Hawaii. October Term, 1913. Henry C. Hapai et al. v. May K. Brown et al. Opinion. Filed November 29, 1913, at 9:57 A. M. J. A. Thompson, Clerk.

216 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs-in-Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Error to Circuit Court, First Circuit.

Judgment.

This cause coming on to be heard at the October 1913 Term of the Supreme Court on writ of error to the Circuit Court of the First Circuit, jury waived, Messrs. Andrews & Quarles appearing for plaintiffs in error, and Messrs. Thompson, Wilder, Watson & Lymer appearing for defendants in error, was duly argued and submitted, and the Supreme Court having on November 29, 1913, filed a written opinion holding that the assignments of error should not be sustained and that the judgment of the Circuit Court should be affirmed.

It is hereby ordered and adjudged that the judgment of the Circuit Court herein be and is hereby affirmed with costs.

BY THE SUPREME COURT.

Entered this 9th day of December, 1913.
[SEAL.] J. A. THOMPSON, *Clerk.*

O. K. as to form.
A. & Q.

Approved,
A. P.

Endorsed: No. 734. Supreme Court of the Territory of Hawaii. October Term, 1913. Henry C. Hapai, et al., Plaintiffs-in-Error, vs. May K. Brown, et al., Defendants-in-Error. Judgment. Filed December 9, 1913, at 9:34 A. M. J. A. Thompson, Clerk. Thompson, Wilder, Watson & Lymer, 3-11 Campbell Block, Honolulu, Attorneys for Defendants-in-Error.

217 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs-in-Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Petition for Writ of Error and Supersedeas.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the Territory of Hawaii:

Your petitioners, Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, plaintiffs in error above named, respectfully show:

That the above-entitled cause is now pending in the said Supreme Court of the Territory of Hawaii and that a judgment was rendered in said cause in and by the said Supreme Court on the 9th day of December, 1913, affirming the judgment of the Circuit Court of the First Judicial Circuit of the said Territory of Hawaii, which last-named judgment was rendered by said Circuit Court on the 21st day of May, 1913, and in and by said last-named judgment said Circuit Court did grant judgment in favor of the defendants in error, together with costs of the action.

That the matter in controversy in said cause exceeds the sum of five thousand dollars besides costs and that the same is a proper case to be reviewed by the Supreme Court of the United States upon writ of error.

Wherefore, your petitioners respectfully pray that a writ of error may be allowed them in the above-entitled cause directing the
218 clerk of the said Supreme Court of the Territory of Hawaii to send the records and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the plaintiffs in error may be reviewed and, if any be found, corrected, according to the laws and customs of the United States, and further pray for an order fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may be appropriate in the premises, to the end that all further proceedings in this Honorable Court may be suspended and

stayed until the determination of such writ of error by said Supreme Court of the United States.

Dated this 5th day of January, 1914.

HENRY C. HAPAI,
G. W. A. HAPAI,
NELSON K. SNIFFEN,
Plaintiffs in Error,
By LORRIN ANDREWS,
Att'y for Henry C. Hapai and G. W. A. Hapai, and
R. P. QUARLES,
Att'y for Nelson K. Sniffen.

Endorsed: No. 734. In the Supreme Court of the Territory of Hawaii. Henry C. Hapai, et al., Plaintiffs in Error, vs. May K. Brown, et al., Defendants in Error. Petition for Writ of Error and Supersedeas. Filed this the 6th day of January, 1914, at 1:55 o'clock P. M. J. A. Thompson, Clerk. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

219 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs-in-Error,
vs.
MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Assignment of Errors.

To the Honorable the Chief Justice of the Supreme Court of the Territory of Hawaii:

Comes now the plaintiffs in error, Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, by their counsel Lorrin Andrews and R. P. Quarles, and make the following assignment of errors, which they aver and submit were committed by the Supreme Court of the Territory of Hawaii in and by its opinion, decision and judgment in this cause, that is to say:

I.

The court erred in sustaining the Circuit Court of the First Judicial Circuit in admitting in evidence for the purpose of showing a former adjudication of the issues in the case Defendants' Exhibit 1. the same being a copy of the record in the Equity proceeding between Kahoiwai and others named as complainants, and Paakuku

and others named as defendants, No. 165 in the Equity Di-
220 vision of the Supreme Court, for the partition of the lands which are the subject matter of this action, the admission of the same in evidence for such purpose, being error, objected and excepted to by the plaintiffs, for the following reasons, namely:

a. The said decree in the said Equity proceeding, or suit, was without jurisdiction in the Hon. Elisha H. Allen, as Chief Justice at Chambers, to make and render, the said Equity suit or proceeding being for purely equitable purposes, as shown by the said Exhibit 1, and in same the said Chief Justice, at Chambers, had no power, jurisdiction or authority to adjudicate a disputed legal title to the lands in controversy.

b. The said Exhibit 1 was not competent nor material nor relevant to prove any issue in the case, the said adjudication being without authority and void.

c. The said Exhibit 1 was not competent to prove the execution, and delivery by Keaka to Paakuku in the year 1868, of a deed conveying to said Paakuku the lands in question in this case, the same being secondary evidence and objected to by the plaintiffs on that ground.

II.

The court erred in sustaining the Circuit Court of the First Judicial Circuit in refusing to permit the plaintiffs, after the defendants had closed their case, to introduce in evidence, the record of a power of attorney executed February 11th, 1875, by Paakuku to K. P. Eldridge, Jr., recorded in Liber 44 at page 183, and in the following words, to-wit:

"Stamped.

Eike auanei na kanaka a pau, Owau o L. Paakuku no Kaonoulu Kula Maui ko Hawaii Pae Aina. ua hana ua hookohu, a ua koho a ma keia palapala ua hana ua hookohu, aku au ia David P. Eldridge Jr., o Honolulu, Oahu i hope ponoi no'u a ma o'u nei a ma ko'u inoa e hana a e hoonoho a e lawelawe ma na pono ponoi o na waiwai paa a me ha waiwai lewa a pau no loko o ka waiwai o Keaka i make aku nei. A oia mau mea ke waiho nei iloko o po Hawaii nei Pae Aina a e hoolimalima aku ina waiwai paa no ka uku hoolimalima maikai a e kuai a hoolilo aku paha ina waiwai lewa a e hana a e hoopaa ina hoolimalima ma kuu inoa no ka pono a me ka pomaikai ma o na waiwai paa a e haawi i mau palapala kuai no na waiwai lewa a e lawe a e hana ina mana a pau o na pono ponoi o kela a me keia waiwai paa ame waiwai lewa, oiai no'u a no'u ponoi na mea a pau o Keaka i make aku nei i hana ia ma kona palapala hooilina a hooko kauoha hope.

221 A e haawi ia ana ma ka lima o kuu hope i olelo ia ka mana nui e hana aku ai no kela a me keia mea ma na mea e pili ana ina waiwai, a iaia ka mana hooponopono ina loaa apua e like me ka'u e hoike nei ma keia palapala me ka mana nui i haawi ia iaia.

A ma keia, o na mea a pau a kuu hope i hana a haawi paha, e lilo no i mea oiaio ke ae i ole ua hana paha e like me keia i hoike ia.

I hoike no keia ke kau nei au i ko'u inoa me ka hoopili mai i ko'u sila i keia la 11 o Feb., A. D. 1875.

kona
L. PAA x KUKU.
kaha.

IKE MAKA.
JOHN H. PATY.

HAWAIIAN ISLANDS,
Island of Oahu, ss:

On this tenth day of February A. D. 1875, before me personally appeared L. Paakuku, known to me to be the person described in and who executed the annexed instrument, and who acknowledged that she executed the same for the uses and purposes therein set forth.

JOHN H. PATY,
Notary Public.

Recorded & Compared this 6th day of December, A. D. 1875, at 11 o'clock A. M.

THOMAS BROWN,
Registrar of Conveyances.

Office of the Registrar of Conveyances.

HONOLULU, T. H., February 8, 1910.

The foregoing is a true copy of record, recorded in the office of the Registrar of Conveyances of the Territory of Hawaii in Book 44 on pages 183 and 184.

Attest:

[SEAL.] CHAS. H. MERRIAM,
Registrar of Conveyances for the Territory of Hawaii.

222 The said record of said power of attorney was competent, material and relevant as evidence on behalf of the plaintiffs to show that said Paakuku after said adjudication, and presumably upon the ground that such adjudication was void, claimed not through such adjudication, but solely under the will of Keaka, and was admissible for the purpose of establishing an estoppel against the defendants in this case from claiming under the said adjudication.

III.

The court erred in sustaining the Circuit Court of the First Judicial Circuit in holding that the said Exhibit 1 proved an adjudication and determination of the title to the lands in controversy in favor of the predecessor of the defendants, and that same was, and is, binding on the plaintiffs in error, for the reasons given in the first assignment of error herein.

IV.

The court erred in sustaining the Circuit Court of the First Judicial Circuit in refusing to permit plaintiffs to introduce in evidence Probate Record 1022, Vol. 13, Vol. 539, the same being the record of the probate of the will of Paakuku in the year of 1876, with all papers relating thereto, including contest by some of the brothers and sisters of Paakuku to the probating of the will on the ground that Paakuku lived and died on the Island of Maui, and that she did not own all of the land which she had attempted to will, but only owned an undivided interest in it with her said brothers and sisters. Said Probate Record was offered by the plaintiffs to show that the said adjudication was not regarded by the devisees of Kekaka as binding, and in conjunction with the said power of attorney to D. P. Eldridge Jr. from Paakuku, to show that said Paakuku did not consider the said adjudication in the partition suit as binding, and did
223 not rely on same, and said Record should have been received in rebuttal of the estoppel claimed by defendants, and its rejection was error prejudicial to the plaintiffs.

V.

The court erred in sustaining the Circuit Court of the First Judicial Circuit in holding that the said adjudication by the Hon. Elisha H. Allen, Chief Justice, at Chambers, was a final adjudication of the legal title in Paakuku, and in holding that the same is binding on the plaintiffs, and precludes them from a judgment quieting their title to undivided interests in the lands in controversy, to the prejudice of the plaintiffs, to all of which the plaintiffs duly excepted.

Wherefore, these plaintiffs in error pray that the judgment of said Supreme Court of the Territory of Hawaii, so ordered, rendered, and entered in this cause, may be reversed.

HENRY C. HAPAI,
G. W. A. HAPAI,
NELSON K. SNIFFEN,
Plaintiffs in Error,
By LORRIN ANDREWS AND
R. P. QUARLES,
Attorneys for Plaintiffs in Error.

224 [Endorsed:] No. 734. In the Supreme Court of the Territory of Hawaii. Henry C. Hapai et al., Plaintiffs in Error, vs. May K. Brown et al., Defendants in Error. Assignment of Errors. Filed this the 6th day of January, 1914, at 1:55 o'clock P. M. J. A. Thompson, clerk. From law office of Andrews & Quarles, 37 Merchant street, Honolulu, T. H.

225 In the Supreme Court of the United States, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Affidavit as to Amount Involved.

TERRITORY OF HAWAII,
City and County of Honolulu, ss:

Henry C. Hapai, of the City and County of Honolulu, Territory of Hawaii, being first duly sworn, deposes and says: That he is one of the plaintiffs in error in the above-entitled cause, and is well acquainted with the matters in controversy in said cause and with the interests of plaintiffs in error herein; that the value of the estate sought to be disposed of in said action to quiet title and the share claimed by plaintiffs in error therein which is in dispute in this case is upwards of Sixty Thousand Dollars ($60,000.00); that the value of the interests in said cause involved and dependent upon the outcome of said controversy between the plaintiffs in error and defendants in error, exclusive of costs, far exceeds the sum or value of five thousand dollars ($5,000); that under the decision of the Supreme Court of the Territory of Hawaii, the plaintiffs in error are totally deprived of their interests in said estate and that the value of said estate to deponent if the decision of the Supreme
226 Court of the Territory of Hawaii is reversed and set aside will amount to fifty thousand dollars ($50,000).

And deponent further saith not.

HENRY C. HAPAI.

Subscribed and sworn to before me this 6th day of January, 1914.

[SEAL.] SAMUEL UPA,
Notary Public, First Judicial Circuit, Territory of Hawaii.

Endorsed: No. 734. In the Supreme Court of the United States. Henry C. Hapai et al., Plaintiffs in Error, vs. May K. Brown et al., Defendants in Error. Affidavit as to Amount Involved. Filed this the 6th day of January, 1914, at 1:55 o'clock P. M. J. A. Thompson, Clerk Supreme Court of Hawaii. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

227 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Order for Writ.

Upon reading and filing the foregoing petition, together with an Assignment of Errors in the premises, and on motion of Lorrin Andrews attorney for the above-named Henry C. Hapai and G. W. A. Hapai, and R. P. Quarles, attorney for the above-named Nelson K. Sniffen, it is ordered that a writ of error be, and is hereby, allowed, to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein; and that the amount of bond on said writ of error be, and the same is hereby, fixed in the sum of one thousand dollars ($1,000); and that upon the filing by said above-named plaintiffs in error of an approved bond in said amount, all further proceedings in said cause and in the said Supreme Court of the Territory of Hawaii shall be stayed and suspended until the determination of such said writ of
228 error by the said Supreme Court of the United States.

[SEAL.] A. G. M. ROBERTSON,
Chief Justice Supreme Court for the Territory of Hawaii.

Dated this 6th day of January, 1914.

Endorsed: No. 734. In the Supreme Court of the Territory of Hawaii. Henry C. Hapai, et al., Plaintiffs in Error, vs. May K. Brown, et al., Defendants in Error. Order for Writ. Filed this the 6th day of January, 1914, at 1:55 o'clock P. M. J. A. Thompson, Clerk. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

229 In the Supreme Court of the United States.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Writ of Error to the Supreme Court for the Territory of Hawaii.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court for the Territory of Hawaii, before you, or some of you, between Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, and May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a corporation, Defendants in Error, a manifest error hath happened to the great damage of the said plaintiffs in error, as by their complaint appears;

We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the
230 record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within Sixty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, the 6th day of January, in the year of our Lord one thousand nine hundred and fourteen.

[Seal Supreme Court, Territory of Hawaii.]

J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of Hawaii.

Allowed this 6th day of Jan., 1914.

A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii.

231 [Endorsed:] No. 734. In the Supreme Court of the United States. Henry C. Hapai et al., Plaintiffs in Error, vs. May K. Brown et al., Defendants in Error. Writ of Error to the Supreme Court for the Territory of Hawaii. Filed this the 6th day of January, 1914, at 1:55 o'clock P. M. J. A. Thompson, Clerk Supreme Court of Hawaii. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

232 In the Supreme Court of the United States.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to May K. Brown, Arthur M. Brown, Her Husband; Blanche Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington, Sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court for the Territory of Hawaii, wherein Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen are plaintiffs in error, and you are defendants in error,—to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief
233 Justice of the Supreme Court of the United States, this 6th day of January, in the year of our Lord one thousand nine hundred and fourteen.

A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Attest:

[Seal Supreme Court, Territory of Hawaii.]

J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of Hawaii.

234 [Endorsed:] No. 734. In the Supreme Court of the United States. Henry C. Hapai et al., Plaintiffs in Error, vs. May K. Brown et al., Defendants in Error. Citation. Filed this the

6th day of January, 1914, at 1:55 o'clock P. M. J. A. Thompson, Clerk Supreme Court of Hawaii. Issued Jan'y 12, 1914, at 9:06 A. M. J. A. Thompson, Clerk Returned Jan'y 12, 1914, at 9:50 A. M. J. A. Thompson, Clerk. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

Due service of the within Citation and receipt of copy is hereby admitted this 10th day of January, A. D., 1914.

THOMPSON, WILDER, WATSON & LYMER,
B. K. DWIGHT,
Attorneys for Defendants.

235 In the Supreme Court of the Territory of Hawaii.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Stipulation as to Record on Writ of Error to the United States Supreme Court.

Come now Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, plaintiffs in error, by their counsel, Lorrin Andrews, Esq., and Ralph P. Quarles, Esq., and May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a corporation, by their counsel, Messrs. Thompson, Wilder, Watson & Lymer, and stipulate and agree that for all practical purposes upon writ of error to the Supreme Court of the United States from the Supreme Court of the Territory of Hawaii in the above-entitled cause, it is only necessary to include in said record the following papers, minutes and record, and that the same may constitute the entire record on writ of error to the said Supreme Court of the United States as follows, to-wit:

1. Plaintiffs' Amended Bill of Complaint;
2. Answer of Defendants to Plaintiffs' Amended Bill of Complaint;
3. Order transferring cause from the Second to the First Circuit;
4. Stipulation of parties as to the title under which they claim;
5. Transcript of testimony on last appeal;

J. A. T., Clerk.

"1"
6. Defendants' Exhibit ["A"]*
7. Decision of Circuit Court, dated May 24, 1913;

[* Letter erased in copy.]

8. Judgment of Circuit Court, dated May 29, 1913;
236 9. Petition for writ of error Supreme Court of the Territory of Hawaii to the First Circuit Court, filed September 6, 1913;
10. Assignments of error filed September 6, 1913;
11. Writ of error issued September 6, 1913;
12. Opinion Supreme Court of the territory of Hawaii, filed November 29, 1913;
13. Judgment Supreme Court of the Territory of Hawaii, filed December 9, 1913;
14. Petition for writ of error to the United States Supreme Court, January 6, 1914;
15. Assignments of error, filed January 6, 1914;
16. Affidavit as to amount in controversy, filed January 6, 1914;
17. Order for writ of error, dated January 6, 1914;
18. Writ of error to the United States Supreme Court, issued January 6, 1914;
19. Citation and acknowledgment of same.

It is stipulated that bond on writ of error from the Supreme Court of the Territory of Hawaii to the Supreme Court of the United States has been filed in due form and that same may be omitted from the record in this case.

Done and dated this the 12th day of January, 1914.

LORRIN ANDREWS,
R. P. QUARLES,
Attorneys for Plaintiffs in Error.
THOMPSON, WILDER, WATSON & LYMER,
A. A. W.,
Attorneys for Defendants in Error.

Endorsed: No. 734. In the Supreme Court of the Territory of Hawaii. Henry C. Hapai, et al., Plaintiffs in Error, vs. May K. Brown, et al., Defendants in Error. Stipulation as to Record on Writ of Error to the United States Supreme Court. Filed this the 17th day of January, 1914, at 9:50 o'clock A. M. Robert Parker, Jr., Assistant Clerk. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

237 In the Supreme Court of the Territory of Hawaii.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Præcipe to the Clerk.

To James A. Thompson, Esq., Clerk of the Supreme Court for the Territory of Hawaii.

SIR: You are hereby requested to prepare and certify, in pursuance to the Writ of Error issued in the above-entitled cause, to remove the record therein to the Supreme Court of the United States,—copies of the following enumerated papers now on file herein, that is to say:

1. Plaintiffs' Amended Bill of Complaint;
2. Answer of Defendants to Plaintiffs' Amended Bill of Complaint;
3. Order transferring cause from the Second to the First Circuit;
4. Stipulation of parties as to the title under which they claim;
5. Transcript of testimony on last appeal;

"1"
J. A. T., Clerk. 6. Defendants' Exhibit ["A";]*

7. Decision of Circuit Court, dated May 24, 1913;
8. Judgment of Circuit Court, dated May 29, 1913;
9. Petition for writ of error Supreme Court of the Territory of Hawaii to the First Circuit Court, filed September 6, 1913;
10. Assignments of error filed September 6, 1913;

238 11. Writ of error issued September 6, 1913;

12. Decision Supreme Court of the Territory of Hawaii, filed November 29, 1913;
13. Judgment Supreme Court of the Territory of Hawaii, filed December 9, 1913;
14. Petition for writ of error to the United States Supreme Court, January 6, 1914;
15. Assignment of error, filed January 6, 1914;
16. Affidavit as to amount in controversy, filed January 6, 1914;
17. Order for writ error, dated January 6, 1914;
18. Writ of error to the United States Supreme Court, issued January 6, 1914;
19. Citation and acknowledgment of same.

[* Letter erased in copy.]

20. Stipulation as to record on Error to Supreme Court of U. S. Dated this 14th day of January, 1914.

LORRIN ANDREWS,
R. P. QUARLES,
Attorneys for Plaintiffs in Error.

Endorsed: No. 734. In the Supreme Court of the Territory of Hawaii. Henry C. Hapai, et al., Plaintiffs in Error, vs. May K. Brown, et al., Defendants in Error. Præcipe to Clerk. Filed this the 14th day of January 1914, at 11 o'clock A. M. J. A. Thompson, Clerk. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

239 In the Supreme Court of the United States.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN,
Plaintiffs in Error,
vs.
MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Order Extending Time for Forwarding Transcript of Record.

Good cause appearing therefor and pursuant to Section 1 of Rule 9 of the Supreme Court of the United States, it is hereby ordered that the Plaintiffs in Error herein be, and they are hereby allowed until the 6th day of May, 1914, within which to file the record in the above cause in the Supreme Court of the United States.
Dated, Honolulu, T. H., February 12, 1914.

[SEAL.] A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Endorsed: No. 734. In the Supreme Court of the United States. Henry C. Hapai, et al., Plaintiffs in Error, vs. May K. Brown, et al., Defendants in Error. Order Extending Time for Forwarding Transcript of Record. Filed this the 12th day of February, 1914, at 10:15 o'clock A. M. J. A. Thompson, Clerk Supreme Court of Hawaii. From Law Office of Andrews & Quarles, 37 Merchant Street, Honolulu, T. H.

240 In the Supreme Court of the Territory of Hawaii, October Term, 1913.

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN, Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, Her Husband; BLANCHE Walker, John Walker, Her Husband; Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error.

Certificate of Clerk to Transcript of Record.

TERRITORY OF HAWAII,
City and County of Honolulu, ss:

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, in obedience to the within writ of error, the original whereof is herewith returned, (being pages 229 to 231 both inclusive) of the foregoing transcript, do hereby transmit to the Supreme Court of the United States the foregoing transcript of record (being pages 1 to 218 both inclusive, pages 225 to 228 both inclusive and pages 235 to 238 both inclusive), and I do certify the same to be full, true and correct transcript of the record and proceedings had in said Supreme Court of the Territory of Hawaii in the case entitled in said Court "Henry C. Hapai, et al., Plaintiffs in Error versus May K. Brown, et al., Defendants in Error", and numbered 689 and 734.

I do further certify that the foregoing page numbered 239 is a full, true and correct copy of the "Order Extending Time for Forwarding Record, dated February 12, 1914", the original
241 whereof having heretofore been, on to-wit: February 12, 1914, transmitted to the Supreme Court of the United States; and that the original "Assignment of Errors", (being pages 219 to 224 both inclusive), and the original "citation with the acknowledgment of service" (being pages 232 to 234) of said transcript of record are hereto attached and herewith returned.

In witness whereof I have caused the Seal of the said Supreme Court of the Territory of Hawaii to be hereunto affixed, at Honolulu, City and County of Honolulu, in said Territory, this 19th day of March A. D. 1914.

[Seal Supreme Court, Territory of Hawaii.]

JAMES A. THOMPSON,
Clerk Supreme Court of the Territory of Hawaii.

Endorsed on cover: File No. 24,146. Hawaii Territory Supreme Court. Term No. 120. Henry C. Hapai, G. W. A. Hapai, and Nelson K. Sniffen, plaintiffs in error, vs. May K. Brown, Arthur M. Brown, her husband; Blanche Walker, John Walker, her husband, et al. Filed April 3d, 1914. File No. 24,146.

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APPENDIX TO TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 120.

HENRY C. HAPAI, G. W. A. HAPAI, AND NELSON K. SNIFFEN, PLAINTIFFS IN ERROR,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

FILED APRIL 3, 1914.

24,148

APPENDIX TO TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 120.

HENRY C. HAPAI, G. W. A. HAPAI, AND NELSON K. SNIFFEN, PLAINTIFFS IN ERROR,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

FILED APRIL 3, 1914.

24,148

TRANSLATIONS OF HAWAIIAN DOCUMENTS PRINTED IN HAWAIIAN IN THE TRANSCRIPT OF RECORD.

	Index.	Original page	Record page	Print page
Translation	Exhibit "A"—Document entitled "Palapala Hooko"	100	57	3
"	Exhibit "B"—Document entitled "Palapala Hooko"	101	58	5
"	Exhibit "C"—Deed, Paakuku, Nov. 10, 1869....	102	58	7
"	Exhibit "D"—Document entitled "Palapala Hooko," &c.	106	61	11
"	Exhibit "F"—Lease between Paakuku and Wong Ko	112	64	13
"	Exhibit "G"—Will of John Ii..	115	66	15
"	Exhibit "H"—Deed, J. Komoikehukeu, January 12, 1871.....	118	67	17
"	Answer of J. Komoikehukehu...	131	74	19
"	Exhibit "G"—Document entitled "Palapala Haawi"	146	83	23
"	Exhibit "H"—Document entitled "Palapala Hooilina"	148	84	25
"	Exhibit "G"—Document entitled "Palapala Haawi"	153	87	26
"	—Document entitled "Palapala Haawi"	167	94	28
"	Power of Attorney executed February 11th, 1875, by Paakuku to D. P. Eldredge, Jr., recorded in Liber 44, Page 183..		114	30
"	Power of Attorney executed February 11th, 1875, by Paakuku to Eldredge, Jr., recorded in Liber 44, Page 183.....	220	127	32

EXHIBIT "A"

COPY.

AWARD.

The Commissioners to Quiet Land Titles have this day awarded to H. Hewahewa as his own the Kuleana Number 3237, with title less than allodial that he may change to a fee simple title according to law, as he may desire, or he may receive title for the term of thirty years if he so desires.

This Award acknowledges his title to be that of less than allodial to the land which he claimed of Kaonoulu being an Ahupuaa in Kula in the Island of Maui if payment be made of the expenses incurred being $5. (five dollars)

In case this sum shall not be paid then this Award shall not become a title to him. This title has been awarded in accordance with the new law passed on the 19th day of June, A. D. 1852. Reserving however, the rights of the natives therein.

By order of the Commissioners to Quiet Land Titles.

Commissioners Office,)
Honolulu, Oahu,)
7th of March, 1854)

J. KEKAULAHAO,
Secretary to the Commissioners.

Received by me the sum as stated above.

Commissioners' Office, Honolulu, 7th March, 1854.

(signed) S. H. SMITH.

Received $1.25 for the Copy.

D. KALAKAUA,
2d Clk. Comrs. Off.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "A" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson

and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "B"

COPY.

AWARD.

The Commissioners to Quiet Land Titles have this day awarded to H. Hewahewa the Kuleana Number 3237 as his that he has title less than allodial, and that he may change to a fee simple title according to lay, as he may desire, or he may receive title for the term of thirty years if he so desired.

This Award acknowledges his title to be less than allodial to the land which he claimed of Kaluapulu, an Iliaina Ap. 1 at Kalihi, in the Island of Oahu, if payment be made of the expenses incurred amounting to $5. (Five Dollars)

And if the said sum be not paid, this award will not pass title to him. This title has been awarded in accordance with the new law passed on the 19th day of June, A. D. 1852. But reserving, however, the rights of the natives therein.

By order of the Commissioners to Quiet Land Titles.

Commissioners' Office, Honolulu, Oahu
7th March, 1854.

J. KEKAULAHAO,
Secretary to the Commissioners.

Received by me the sum as above stated.
Commissioners' Office, Honolulu
7th March, 1854.

(signed) J. H. SMITH.

Received $1.25 for the copy.

D. KALAKAUA,
2d Clk. Comnrs. Off.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "B" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry

Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "C"

STAMP

This document is an absolute conveyance of realty made this tenth day of November in the year one thousand eight hundred sixty-nine between Paakuku (w) of Kula, Island of Maui, of the first part, and Ioane Ii of Honolulu, Island of Oahu, of the second part,

Witnesseth that Paakuku (w) for the sum of Fifty Dollars received in my hand from Ioane Ii aforesaid therefore it is hereby granted, bargained, conveyed, and by this document do hereby grant, sell, convey and forever quit-claim my interest in the land mentioned hereunder to Ioane Ii and his heirs, executors, administrators and assigns forever.

The boundaries of the land I am conveying by this deed situate at Kalihi, Island of Oahu, known as the Iliaina of Kaluapulu, are as follows: Apana (Lot) 1 The Pond of Pahauiki and the kula adjoining: Beginning at the North corner at a stone marked X and running S. 18° E. 9.00 chains along the kula boundary of Mokauea; thence S. 5° W. 14.00 chains along the boundary of Mokauea; thence S. 86½° W. 3.28 chains; thence N. 81° W. 8.80 chains along the boundary of the Pond of Ananoho; thence S. 45° W. 11.30 chains along the kula boundary of Ananoho; thence S. 18° W. 0.62 chains; thence S. 45° W. 0.96 chain along the bank of Pahauiki; thence S. 70° W. 1.30 chains along the bank; thence W. 0.50 chains; thence N. 63° W. 2.00 chains; thence N. 45° W. 4.82 chains along the bank of Pahauiki; thence N. 37½° W. 1.10 chains; thence N. 27° W. 2.10 chains; thence N. 11° W. 1.00 chain; thence N. 11° E. 0.96 chain; thence N. 26° W. 2.70 chains along the bank of Pahauiki; thence N. 3° W. 1.18 chains; thence N. 70° E. 1.13 chains; thence along the boundary of the Pond of Pahaunui; thence S 69° E. 0.35 chain; thence N. 70° E. 2.88 chains along the boundary of the Pond of Pahaunui; thence N. 80° E. 2.25 chains; thence N. 88° E. 5.79 chains along the kula boundary of Pahaunui; thence N. 51° E. 11.00 chains; thence N. 45° E. 12.80 chains along the kula of Pahaunui to the beginning. 42 Acres, 1½ square chains.

Apana 2. Kaciole a kula by the Pond. Beginning at the North corner and running S. 32° W. 6.50 chains along the boundary of Mr. Adams' premises; thence S. 63° W. 13.16 chains along the kula boundary of Apili; thence S. 37½° W. 0.74 chain along the boundary of the Pond of Haunapo; thence S. 26½° E. 3.36 chains along the boundary of the Pond of Haunapo; thence N. 58° E. 2.43 chains along the boundary of Haunapo; thence S. 78° E. 0.96 chain; thence N. 63° E. 14.40 chains along the kula boundary of Niau;

thence N. 12° W. 7.00 chains to the point of beginning. 8 Acres 1 42/100 square chains.

Apana 3. A piece of land (Mooaina) in Kaluapulu. Beginning at the West corner and running N. 52° E. 2.10 chains along the boundary of Mookukahi; thence S. 40° E. 5.30 chains along the land boundary of Kama's; thence S. 41° E. 0.20 chain; thence S. 48° E. 2.80 chains along the boundary of Kama's; thence S. 43° W. 1.95 chains along Stream; thence N. 48° W. 8.00 chains along the boundary of Kekualiilii to the point of beginning. 1 Acre 5 40/100 square chains.

Apana 4. A Mooaina in Kaluapulu. Beginning at the West corner and running S. 38° E. 8.00 chains along the boundary of Kama's; thence N. 49° E. 2.20 chains along the boundary of Apili; thence N. 41° W. 4.27 chains along the boundary of Kaliawa; thence S. 50° W. 0.33 chain; thence N. 43° W. 3.63 chains along the boundary of Kukahi; thence S. 54° W. 1.33 chains to the beginning. 1 Acre 4 56/100 square chains.

Apana 5. A Mooaina in Kaluapulu. Beginning at the South corner and running N. 48° W. 8.42 chains along the boundary of Kama's; thence N. 50° E. 2.80 chains along the boundary of Kaluaopalena; thence S. 44° E. 8.30 chains along the boundary of Kaliawa; thence S. 48° W. 2.40 chains along the boundary of Kaliawa to the beginning. 2 Acres 1 square chain.

Apana 6. A Division of Kaluapulu. Beginning at the North corner and running S. 60° W. 2.50 chains along the boundary of the Ili Kaleapaa; S. 28° W. 3.22 chains along the boundary of Kaleapaa; thence S. 45° E. 8.00 chains along the land boundary of Kama's; N. 40° E. 2.70 chains along the boundary of Kawao's; thence N. 18° E. 0.80 chain along the Stream; thence N. 49° W. 3.00 chains along the boundary of Mokauea; thence N. 50° E. 0.70 chain; thence N. 27° W. 4.52 chains along the boundary of Mokauea to the beginning. 3 Acres 6 80/100 chains.

Apana 7. The Kula of Kaahaloa, Kaluapulu. Beginning at the East corner and running N. 35° W. 2.80 chains along the boundary of Alika's; thence S. 60° W. 6.70 chains along the boundary of Alika's; thence S. 40° W. 2.20 chains along the Stream; thence S. 19° W. 9.00 chains along Stream; thence S. 9° E. 1.50 chains; thence N. 46° E. 17.00 chains along the boundary of Alika's to the beginning. 6 Acres 9 47/100 square chains.

Apana 8. 6 Laelae, a kula in Kaluapulu. Beginning at the South corner at Stream N. 26° W. 28.00 chains along the edge of Stream; thence N. 55° W. 24.10 chains along the boundary of Kalei's; thence S. 2½° W. 18.30 chains along ridge at the boundary

of Kahauiki; thence S. 78° E. 16.65 chains to the beginning. 26 Acres. In all the lots, 92 Acres.

Together with the buildings thereupon and all permanent improvements upon the land as well as all property thereon, property not mentioned herein, leases, income producing property and the benefits accruing therefrom together with all the rights and benefits of Paakuku in the lands hereinabove mentioned in all its appurtenances to Ioane Ii forever.

As witness of this, I, the party of the first part, herewith sign with my hand and my seal on the day and year first above mentioned.

Sealed and delivered in)
presence of)
H. L. SHELDON)
WM. H. DAVIS)

PAAKUKU her X mark

Register Office Oahu ss. On this 10th day of November, A. D. 1869 personally appeared before me Paakuku party to the foregoing Instrument who acknowledged that she had executed the same for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Recorded and compared this 10th day of November A. D. 1869 at 1 o'clock P. M.

THOMAS BROWN,
Registrar of Conveyances.

Register Office Honolulu
October 27th 1871

I hereby certify that the foregoing is a true and correct copy of an Instrument of record in this office in Liber 29 on pages 102 and 103 and 104 and 105 of Miscellaneous Records.

THOMAS BROWN,
Registrar of Conveyances.

(SEAL)

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "C" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her

husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "D"

COPY.

AWARD.

The Commissioners to Quiet Land Titles have this day awarded to Hewahewa Award No. 3237 as his. He has an allodial title. Wailuku, Maui.

This Award acknowledges his title as allodial to the land which he claimed and described by metes and bounds in the notes of survey of E. Bailey, should payment be made of the expenses incurred until a receipt is received for the sum of $5 (Five Dollars).

And if the said sum is not paid, this award will not give him title.

By order of the Commissioners to Quiet Land Titles.

Commissioners' Office Honolulu February 11th 1854.

J. KEKAULAHAO,
Secretary to the Commissioners.

Received by me the sum as above stated.
Commissioner's Office. And for the copy $1.50 1854.
Honolulu, October 27th 1871.

D. KALAKAUA.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "D" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

NO. 3237 HEWAHEWA.

Kepukakeeo, Wailuku, Maui.

Apana (Lot) 3. Beginning at the West corner and running

N.	77 °	E.	98	chains	along	Ihumai
"	78 °	"	8.27	"	"	Lonohewa
"	7 °	W.	1.76	"	"	Konohiki
"	74¾°	E.	2.17	"	"	"
"	20½°	W.	4.51	"	"	"
S.	59 °	"	.66	"	"	"
"	75½°	"	.66	"	"	"
"	22 °	E.	.33	"	"	Ihumai
"	54¾°	W.	4.59	"	"	"
"	66½°	"	1.05	"	"	Konohiki
"	64 °	"	.82	"	"	"
"	62¾°	"	1.50	"	"	"
"	12 °	E.	2.02	"	"	"
"	67¾°	W.	1.09	"	"	"
"	10¼°	"	2.21	"	"	ditch to point of beginning.

4 67/100 Acres.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "Helu 3237. Hewahewa" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. Hopkins,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, November 18, 1915.

EXHIBIT "F"

STAMP

This instrument is a lease of land made this eleventh day of November in the year one thousand eight hundred sixty-nine between Paakuku (w) of Kula Island of Maui of the first part and Wong Ko (Chinaman) of Wailuku Maui of the second part—— The party of the first part hereinabove mentioned hereby leases my land of Koanaulu, situate at Kula, Maui, which shall belong to Wong Ko (Chinaman) the party of the second part hereinabove mentioned for Five Years for the consideration of Sixty-five Dollars per annum which shall be paid as follows: The first year shall be paid on the first day of January of the year one thousand eight hundred and seventy and the remaining years shall be paid semi-annually which shall continue to be so paid until the end of the term mentioned in this instrument of lease—everything upon the land shall revert except the wood which shall belong to the first party together with the land lying between surrounded by a fence within Koanaulu the bounds being as follows—the land of Sniffen being on the Ulupalakua side, Haleakala Mountain mauka and mauka, the Pond of Kalepolepo adjoining the beach, makai of the land of Sniffen, Naalae on the Makawao side, and by this lease the part leased by me to John Halstead being reserved—but all the land outside of the fenced plot mentioned above, all of which shall belong to the second party,—and that if such portion of the Kula land leased by the second party shall become dry and be without water the first party hereby consents that the animals (live stock) of the second party may be allowed to enter within the enclosure reserved to the first party to water his stock, the second party using careful precautions until his stock had been watered, then the second party shall immediately remove them without fail to the place leased to him. The taxes upon the land shall be borne by the first party, that is the government taxes. And further it is agreed that the live stock of the first party may be permitted to pasture upon the land leased to the second party without interference, that is, his own live stock. It is hereby mutually agreed by the two parties that at the end of the term herein mentioned and should the second party again desire to lease this land for a further term but which shall not exceed five years, it shall be so done—That at the expiration of this lease the land shall be returned in good condition. We have affirmed this foregoing lease and that our heirs and our administrators and our assigns shall observe all the conditions hereinabove set forth.

For the truth of this, we hereunto sign our names and affix our seals on this day as hereinabove set forth.

her
Witnesses:) PAAKUKU X
J. KOMO) mark
WONG KWAI) WONG KO

Register Office Oahu ss On this 11th day of November A. D. 1869 personally appeared before me Paakuku and Wong Ko and severally acknowledged that they had executed the foregoing Instrument for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Recorded and compared this 11th day of November A. D. 1869 at 2 o'clock P. M.

THOMAS BROWN,
Registrar of Conveyances.

Register Office Honolulu
October 28th 1871

I hereby certify that the foregoing is a true and correct copy of an Instrument on record in this Office in Liber 29 on pages 202 and 203 and 204 of Miscellaneous Records.

THOMAS BROWN,
Registrar of Conveyances.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "F" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "G"

Before Almighty God, Amen. I, John Ii, of the City of Honolulu, Island of Oahu, Hawaiian Islands, have made and am now making my will and do declare publicly that this is my last will and testament.

After paying all my debts, all my property both real and personal shall descend to my heirs who are mentioned below as follows:

First. Irene Haalou Ii, my own daughter, is the first heir, as follows:

The land of Halaape, Kohala, Island of Hawaii.

The land of Waipunaulaiki, South Kona, Hawaii.

The land bequeathed by Henrietta Kaleimakalii, called Aleemai, Hana, Island of Maui.

Two pieces of land, Kapunakea, Lahaina, Maui.

One loi in Uhao, Lahaina, Maui.

One Ahupuaa of Keopukapaiole in Molokai.

On the Island of Oahu. One iliaina in Makiki, known as Kaneiolole, the source of the water down to Pawaa.

One house lot in Kamakela, Honolulu. One kuleana in Waiakemi, Honolulu. One kuleana in Paakiko, Maemae, Honolulu. One Ahupuaa of Waipio, in Ewa, and one kuleana of Kekela (w), deceased, and owned by me, at Kee, Haena, Island of Kauai, and one-half of all my personal property.

Second. My wife, Maria Ii, is the second heir. One land in Hilo, being the land of Laumaina purchased by me. One, the Iliaina of Makana, in Koolauloa, Oahu, and one-half of all the personal property. And if she marries again, these lands shall descend to my daughter. She cannot bequeath to any one.

Third. My younger brother, J. Komoikehuehu, is the third heir. One, the Iliaina of Homaikaia, in Waipio, and one bought land, being the half of Auiole in Waikele, Ewa, Oahu, and one, the Iliaina of Kaluapulu, Kalihi, Oahu; those are the lands that I bequeath to him.

Fourth. My interest in the land of G. Naaihelu, my deceased younger brother, shall belong to his widow, Kamealani.

Fifth. My bought land, being the lot at Pawaa, adjoining Dr. Judd's land on the Waikiki side of the government road leading to Waikiki-kai, is for A. F. Judd, that being his land that I am bequeathing him.

By this will of mine, I have appointed and do hereby appoint J. Komoikehuehu, A. F. Judd, they both are to be my executors and administrators, and be the guardians of the person and property of my daughter, the first mentioned devisee made in this will.

All the income from the lands leased and other incomes from all lands of my daughter, whose sole care shall be with them until she grows to womanhood or begats children of her own; they shall be the executors during the lifetime of my daughter and of her children in accordance with my wishes as expressed in this will, and they shall receive compensation as provided by law.

And my executors shall place my daughter in some suitable place to be educated in the two languages, and that my child must be brought up in the path of rectitude, and that the first fruits received from the lands of my daughter, being the money received, ten cents shall be taken from each and every dollar, which money is an offering to God's Kingdom, in the same manner as I have done, and my executors are to carry out this request of mine.

And that further, if my daughter should die having borne children, the property shall thereupon descend to her children, and if she should die without having children, it shall then descend to her own mother, and that if she should die, then it shall again descend to my younger brother, J. Komoikehuehu.

In witness of the truth of this, I hereunto sign my name with my own hand and affix my seal this 28th day of April, A. D. 1870.

(Signed) Ioane Ii His X Mark

At the request of the Honorable Ioane Ii to us to be witnesses to his execution of his last Will, we have thereto signed our names in his presence.

D. B. Mahoe, of Honolulu.
D. Kahanu, " "
W. L. Moehonua, " "

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "G" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. Hopkins,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "H"

ORIGINAL
STAMPED

May all men know by this Instrument that I, J. Komoikehuehu, of Honolulu, Island of Oahu, Hawaiian Islands, upon receiving Three Hundred Dollars in good money in my hands from A. Roderick as expressed in this instrument, I have therefore given, sold and conveyed and by this instrument I do hereby absolutely convey my pieces of Kula land, Laelae and Kaahaloa in Kaluapulu, an Iliaina in Kalihi, Oahu, to A. Roderick and his heirs and assigns forever.

The boundaries of the Kula lands I am conveying by this instrument, situate at Kaluapulu, Kalihi, Oahu, being as follows:

Apana VII. The Kula of Kaahaloa. "Commencing at the East corner and running N. 33° W. 2.80 chains along the boundary of Alika's; thence S. 60° W. 6.70 chains along the boundary of Alika's; thence S. 40° W. 2.20 chains along Stream; thence S. 19° W. 9.00 chains along Stream; thence S. 9° E. 1.50 chains; thence N. 40° E. 17.00 chains along the boundary of Alika's to the commencement. 6 Acres 9 47/100 square chains."

Apana VIII. Laelae, a kula in Kaluapulu. "Beginning at the South corner at Stream N. 26° W. 8.80 chains along the edge of Stream; thence N. 55° W. 24.10 chains along the land boundary of Kalei; thence S. 2½° E. 18.30 chains along Mountain (Ridge) to the Kahauiki boundary; thence S. 78° E. 16.15 chains to the beginning. In this Lot, 26 Acres."

These pieces of kula lands that I am conveying as above described are from the Iliaina of Kaluapulu in Kalihi, Oahu, which Paakuku conveyed to Ioane Ii on the tenth day of November, in the year eighteen hundred and sixty-nine and recorded in Book 29 of the Registry of Conveyances of the Government. And Ioane Ii aforesaid is dead and I am one of his heirs mentioned in his will admitted to probate in the Supreme Court and the abovementioned Iliaina being my land devised by Ioane Ii and that these two pieces of kula land are from the aforementioned land devised to me which I am conveying to A. Roderick and his heirs and assigns forever. Together with all property thereupon and permanent improvements thereto are included in this conveyance.

I, Kahikimua, the wife of J. Komoikehuehu, the woman whose name is included in this instrument, hereby releases and I hereby sell and convey my *one-third interest* (dower) in the land that I and my husband are conveying to A. Roderick and his heirs and assigns forever.

For the truth, we hereto set our names with our own hands and our seals this eighteenth day of January, in the year eighteen hundred seventy-one.

J. KOMOIKEHUEHU
KAHIKIMUA her X mark

Register Office Oahu ss. On this 12th day of January, A. D. 1871, personally appeared before me J. Komoikehuehu and Kahikimua, his wife, parties to the foregoing Instrument, who severally acknowledged that they executed the same for the uses and purposes therein set forth. And the said Kahikimua, on a private examination separate and apart from her husband, declared that she executed the same of her own free will without compulsion, fear or constraint from her said husband.

THOMAS BROWN,
Registrar of Conveyances.

Recorded and compared this 12th day of January, A. D. 1871, at 1 o'clock P. M.

THOMAS BROWN,
Registrar of Conveyances.

Register Office Honolulu
October 31, 1871

I hereby certify that the foregoing is a true and correct copy of an Instrument on record in this Office, in Liber 31, on pages 299 and 300 of Miscellaneous Records.

THOMAS BROWN,
Registrar of Conveyances.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "H" in the case of Henry C. Hapai, G. W. A. Hapai, and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

ANSWER OF J. KOMOIKEHUEHU.

Before the Honorable Alfred S. Hartwell, First Associate Justice of the Supreme Court of the Hawaiian Islands.

Kahoiwai (k) et als.)
vs.) Bill for Partition
Paakuku (w) et als.)

Now comes J. Komoikehuehu, one of the defendants, and says that he will abide by the appeals hereafter taken, because of the many inaccuracies against right and truth made in said Bill, therefore, he gives his answer as follows:

The defendant does not know Kahoiwai (k) of the Island of Oahu, Palaualelo of Kohala, Island of Hawaii, Kahoohuli of Honokahau, Island of Maui, Kealopelapela, widow, Kaiwilei, Keohokii (k), Moeikauhane (w) and Kaiwilei, of the Island of Hawaii, children or heirs of Kaiwilei, deceased, may or may not be, the defendant does not know.

Here is another matter that the defendant is not certain of. The relationship of Harriet Sniffen and Akau Hapai, her husband, residing at Hilo, Hawaii, Elizabeth Sniffen and Leloi, her husband, and Esther Sniffen, whose husband is William Wilson, of Honolulu, Island of Oahu, to Makanoenoe and B. F. Sniffen, her husband, both being dead.

Here is another; the defendant is not certain when Keaka died, but the defendant does know that she had some real estate from Hewahewa, deceased, her brother. This Keaka was married to a man whose name was Nahinalau, and they had children. But this defendant does not know of this marriage of Keaka and the children of said Keaka; but he does know, that it was known that this Paakuku now being prosecuted is a daughter of Keaka, not a granddaughter as in the Bill of Complaint.

It is known to the defendant that the said lands were Keaka's during her lifetime, being the Ahupuaa of Koanaulu, at Kula, in Maui, and Kaluapulu, at Kalihi, in Oahu, and of the land in Wailuku the defendant does not know.

The defendant does know when Paakuku took possession of the land, after the death of Keaka, but the defendant does not know when Makanoenoe's heirs took possession. The defendant does know of a certain document made by Keaka before she died, called a Will, filed in the Probate Court before the Honorable James W. Austin, and only admitted to probate by said Court and that the defendant was appointed as administrator under said Will. It is true that the administration thereof is at an end and the administrator discharged

on the 16th day of December, A. D. 1869, before the Honorable H. A. Widemann, one of the Justices of the Supreme Court, in accordance with the will made by Keaka. The defendant does not know Paakuku's position, whether she was the guardian of the estate for the heirs of Keaka or not. That remains with the Court.

Here is another; the defendant does know when Paakuku conveyed to John Ii, on the 10th day of November, A. D. 1869, for the sum of Fifty Dollars ($50.00), the land at Kalihi, called Kaluapulu, being Award 3237, eight pieces, but as to the fraudulent conveyance made by Paakuku as complained in the said Bill, the defendant is not aware; but, in his opinion, the said woman sold to John Ii out of love, because, he was a cousin.

With regard to Paakuku's not informing the heirs as to the total income of that land in Kalihi, from the time of Keaka's death, the defendant does not know nor of her collection of the receipts of that land. It is not certain when Paakuku collected and sold the trees growing upon Koanaulu, on the Island of Maui, and the selling of wood from the death of Keaka to the time said land was leased.

Here is another; the defendant does know when Paakuku leased Koanaulu, on Maui, to Wong Ko, Chinaman, but as to her doing anything in a fraudulent manner to the detriment of the other heirs, the defendant is not aware.

The defendant absolutely denies the statement made in the Bill of Complaint, saying, that this defendant was one of those who urged Paakuku in some fraudulent undertaking against the interests of the heirs in the leasing thereof. Nor is this defendant aware of any injurious action by Wong Ko upon that land of Koanaulu in the hewing of trees and of the young trees, and to his disposition of the wood to those plantations at Waikapu and Wailuku and the selling to others. It is not certain to the defendant the amount of damages mentioned as being about $400 (Four Hundred Dollars) a month; such may or may not be the case. It is not also certain to this defendant whether Paakuku and Wong Ko are able to pay the amount of this damage or not.

Here is another. He is not certain as to Paakuku's going beyond the bounds allowed her under power of the document given by Keaka and her authority in conveying the said land to John Ii as well as the leasing thereof to the Chinaman and her hewing the trees and wood as well as her not reporting to the other heirs the total amount of these transactions made by her.

Her interest in said land, which is a one-sixth, which may be so by the language of this Bill, Paakuku conveyed the said land of Kaluapulu at Kalihi, in Oahu, to John Ii for love and as a gift, which may be so according to the statement made in the former, and

that such conveyance was in the nature of defrauding the rights of the other heirs, the Court shall look into it.

It is true that John Ii died in the year 1870, but after the execution of the said deeds. It is also true that John Ii executed a last will and testament on the 28th day of April, A. D. 1870, and said will was only admitted to probate in the Probate Court on the 7th day of July, 1870. It is also true that John Ii, at his death, left a young daughter, by name Irene Haalou Ii, and that Will. That A. F. Judd and the defendant were named as executors of said last will and guardians of the said child, and that commissions as such were issued them on the 7th day of February, A. D. 1871. And it is also true that J. Komoikehuehu is the devisee of that Iliaina of Kaluapulu at Kalihi, in Oahu. It is also true that on the 12th day of January, A. D. 1871, this defendant did convey to A. Roderick Lot 7 of that Iliaina of Kaluapulu, and Lot 8, for the sum of $300. The statement made in said Bill of Complaint that J. Komoikehuehu was privy with John Ii in the purchasing from Paakuku in a manner fraudulent and against the rights of the said heirs, this defendant absolutely denies such statement, that he was not privy with John Ii in such a transaction in having had conveyed the interests to the said property according to the prior statement made therein. That is for the Court to look into.

Here is another. The joining of this J. Komoikehuehu with the said defendants as in the Bill averred, and together discussing with them in a fraudulent manner so that the said heirs may be deprived, this defendant absolutely denies such averments.

Here follows the last statement of this defendant. His true interest in the said land of Kaluapulu at Kalihi, in Oahu, is under the will of John Ii, and John Ii's interest is under the Deed with Paakuku. This defendant therefore prays this Honorable Court to relieve him from this unfounded case made against him and that he may have his proper costs.

Honolulu, December 8th, 1871.

J. Komoikehuehu.

J. Komoikehuehu, being duly sworn, says that he has read the above answers from beginning to end, that he knows the statements therein made, excepting the statements that he has heard from others, and in which he only believes them to be true.

J. Komoikehuehu.

Subscribed and sworn to before)
me this 8th day of December,)
A. D. 1871.)

Jno. E. Barnard,
Dep. Clerk Sup. Court.

R. G. DAVIS
Atty. and Solicitor
for Komoikehuehu.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' "Answer of J. Komoikehuehu" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "G"

DEED OF GIFT.

Know all men by this deed that I, Koleka Keaka, the heir of H. Hewahewa, do absolutely give my lands, known by the names of Kaonoulu at Kula, Maui, and Kaluapulu in Kalihi, Island of Oahu, to my daughter Paakuku. She is to hold said lands forever, having purchased them from me for the sum of Five Dollars and she shall have these said above lands and descend to her heir or heirs, except the rights of the natives therein; but all my interests appertaining to these lands shall belong to Paakuku.

Here is another. My heirs and executors shall not hereafter oppose, take away, deny and sue because of this gift and sale of mine. The following are the boundaries of Kaonoulu:

Mauka	Towards the mountains
Ma Makawao	" Makawao
Ma Honuaula	" Honuaula
Ma Kai	" the sea.

And the following are the boundaries of Kaluapulu, Oahu:

Ma Ewa	Towards Ewa
Ma Waikiki	" Waikiki
Ma Uka	" the mountains
Ma Kai	" the sea.

And that further, all liens or prosecutions that may be hereafter brought relating to these lands, Kaonoulu and Kaluapulu, or the descendants of the Kind, Kamehameha III., and his heirs and those others relating to those in opposition, then such liens shall devolve upon my heirs and agents forever.

For the truth of this absolute gift of these lands to my daughter Paakuku, I take receipt of the sum of five dollars from her, so as to bind my gift as a conveyance.

For the truth of this, I hereto affix my mark after my name in the presence of witnesses this 11th day of March, A. D. 1868.

her
KOLEKA KEAKA X
mark

WITNESSES
(G. E. MINER) *
B. IOTAMA
his
KANEI X
mark

* (name erased)

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' "Deed of Gift" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. Hopkins,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

EXHIBIT "H"

WILL

Before Almighty God, Amen. This is my last Will, while my health is good at this time, I hereby bequeath my land at Kapuakeeo in Wailuku, Maui, containing 4 70/100 acres, more or less, to my daughter named Apia, which shall be hers forever and may be to her heirs and for the truth of this, I herewith set my mark before this name.

Her
KEAKA X
mark

WITNESSES
B. IOTAMA
(G. E. MINER) *
* name erased.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' Exhibit "H" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, November 18, 1915.

EXHIBIT "G"

DEED OF GIFT.

Know all men by this deed that I, Koleka Keaka, the heir of H. Hewahewa, do absolutely give my lands, known by the names of Kaonoulu at Kula, Maui, and Kaluapulu in Kalihi, Island of Oahu, to my daughter Paakuku. She is to hold said lands forever, having purchased them from me for the sum of Five Dollars and she shall have these said above lands and descend to her heir or heirs, except the rights of the natives therein; but all my interests appertaining to these lands shall belong to Paakuku.

Here is another. My heirs and executors shall not hereafter oppose, take away, deny and sue because of this gift and sale of mine. The following are the boundaries of Kaonoulu:

Mauka	Towards the mountains
Ma Makawao	" Makawao
Ma Honuaula	" Honuaula
Ma Kai	" the sea.

And the following are the boundaries of Kaluapulu, Oahu:

Ma Ewa	Towards Ewa
Ma Waikiki	" Waikiki
Ma Uka	" the mountains
Ma Kai	" the sea.

And that further, all liens or prosecutions that may be hereafter brought relating to these lands, Kaonoulu and Kaluapulu, or the descendants of the Kind, Kamehameha III., and his heirs and those others relating to those in opposition, then such liens shall devolve upon my heirs and agents forever.

For the truth of this absolute gift of these lands to my daughter Paakuku, I take receipt of the sum of five dollars from her, so as to bind my gift as a conveyance.

For the truth of this, I hereto affix my mark after my name in the presence of witnesses this 11th day of March, A. D. 1868.

her
KOLEKA KEAKA X
mark

WITNESSES
(G. E. MINER) *
B. IOTAMA
his
KANEI X
mark

* (name erased)

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' "Deed of Gift" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. Hopkins,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

DEED OF GIFT.

Know all men by this deed that I, Koleka Keaka, the heir of H. Hewahewa, do absolutely give my lands, known by the names of Kaonoulu at Kula, Maui, and Kaluapulu in Kalihi, Island of Oahu, to my daughter Paakuku. She is to hold said lands forever, having purchased them from me for the sum of Five Dollars and she shall have these said above lands and descend to her heir or heirs, except the rights of the natives therein; but all my interests appertaining to these lands shall belong to Paakuku.

Here is another. My heirs and executors shall not hereafter oppose, take away, deny and sue because of this gift and sale of mine. The following are the boundaries of Kaonoulu:

Mauka	Towards the mountains
Ma Makawao	" Makawao
Ma Honuaula	" Honuaula
Ma Kai	" the sea.

And the following are the boundaries of Kaluapulu, Oahu:

Ma Ewa	Towards Ewa
Ma Waikiki	" Waikiki
Ma Uka	" the mountains
Ma Kai	" the sea.

And that further, all liens or prosecutions that may be hereafter brought relating to these lands, Kaonoulu and Kaluapulu, or the descendants of the Kind, Kamehameha III., and his heirs and those others relating to those in opposition, then such liens shall devolve upon my heirs and agents forever.

For the truth of this absolute gift of these lands to my daughter Paakuku, I take receipt of the sum of five dollars from her, so as to bind my gift as a conveyance.

For the truth of this, I hereto affix my mark after my name in the presence of witnesses this 11th day of March, A. D. 1868.

her
KOLEKA KEAKA X
mark

WITNESSES
(G. E. MINER) *
B. IOTAMA
his
KANEI X
mark

* (name erased)

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of Plaintiffs' "Deed of Gift" in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson, and Henry Waterhouse Trust Company, Limited, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated Honolulu, Oahu, September 8th, 1915.

STAMPED

Know all men that I, L. Paakuku of Kaonoulu Kula Maui Hawaiian Islands, do make, appoint and nominate, and by this document I have made and appointed David P. Eldridge Jr., of Honolulu, Oahu, as my attorney and for me and in my name to do and to appoint and perform in all the rights appertaining in all the real and personal property of the estate of Keaka deceased. Such properties being situate within the Hawaiian Islands and to lease the real estate for some good rental and to sell or assign the personal property and to make and affirm the leases in my name for the interest and benefit of the real estate and to give bills of sale for the personal property and to take and perform all the powers of the rights in every real estate and personal property, whereas all that belonged to Keaka deceased are mine and belong to me as bequeathed by her last will and testament.

And there will be given into the hands of my said attorney the absolute power to do to everything pertaining to the properties, and he has the power to adjudicate all the income according to what I am setting forth in this Document with the absolute power given him.

And by this, whatever my attorney has done or given shall be deemed to be true if he consents or has done in accordance with the statement herein made.

As witness of this I herewith set my name and affix my seal this 11th day of Feb., A. D. 1875.

Her
L. PAA X KUKU
Mark

WITNESS
JOHN H. PATY

HAWAIIAN ISLANDS
Island of Oahu ss:

On this tenth day of February A. D. 1875 before me personally appeared L. Paakuku, known to me to be the person described in and who executed the annexed instrument, and who acknowledged that she executed the same for the uses and purposes therein set forth.

JOHN H. PATY,
Notary Public.

Recorded & Compared this 6th day of December, A. D. 1875, at 11 o'clock A. M.

THOMAS BROWN,
Registrar of Conveyances.

Office of the Registrar of Conveyances.
Honolulu, T. H., February 8, 1910.

The foregoing is a true copy of record, recorded in the office of the Registrar of Conveyances of the Territory of Hawaii in Book 44 on pages 183 and 184.

Attest:

(SEAL)

CHAS. H. MERRIAM,
Registrar of Conveyances for the
Territory of Hawaii.

Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of the Power of Attorney executed February 11th, 1875, by Paakuku to D. P. Eldridge, Jr., recorded in Liber 44 at page 183, in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the
Circuit Court of the First Judicial Circuit
of the Territory of Hawaii.

Dated Honolulu, Oahu, November 18th, 1915.

STAMPED

Know all men that I, L. Paakuku of Kaonoulu Kula Maui Hawaiian Islands, do make, appoint and nominate, and by this document I have made and appointed David P. Eldridge Jr., of Honolulu, Oahu, as my attorney and for me and in my name to do and to appoint and perform in all the rights appertaining in all the real and personal property of the estate of Keaka deceased. Such properties being situate within the Hawaiian Islands and to lease the real estate for some good rental and to sell or assign the personal property and to make and affirm the leases in my name for the interest and benefit of the real estate and to give bills of sale for the personal property and to take and perform all the powers of the rights in every real estate and personal property, whereas all that belonged to Keaka deceased are mine and belong to me as bequeathed by her last will and testament.

And there will be given into the hands of my said attorney the absolute power to do to everything pertaining to the properties, and he has the power to adjudicate all the income according to what I am setting forth in this Document with the absolute power given him.

And by this, whatever my attorney has done or given shall be deemed to be true if he consents or has done in accordance with the statement herein made.

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L. PAA Her X KUKU Mark

WITNESS
JOHN H. PATY

HAWAIIAN ISLANDS
Island of Oahu ss:

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Territory of Hawaii,)
)ss.
Island of Oahu.)

I hereby certify that the foregoing is a correct translation of the Power of Attorney executed February 11th, 1875, by Paakuku to D. P. Eldridge, Jr., recorded in Liber 44 at page 183, in the case of Henry C. Hapai, G. W. A. Hapai and Nelson K. Sniffen, Plaintiffs in Error, vs. May K. Brown, Arthur M. Brown, her husband, Blanche Walker, John Walker, her husband, Walter F. Dillingham, Robert W. Atkinson and Henry Waterhouse Trust Company, Limited, a Corporation, Defendants in Error, on file in the Supreme Court of the Territory of Hawaii.

C. L. HOPKINS,
Official Hawaiian Interpreter in and for the
Circuit Court of the First Judicial Circuit
of the Territory of Hawaii.

Dated Honolulu, Oahu, November 18th, 1915.

Office Supreme Court, U. S.
FILED
DEC 14 1915
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 120.

HENRY C. HAPAI, G. W. A. HAPAI, AND NELSON K. SNIFFEN, PLAINTIFFS IN ERROR,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF IN OPPOSITION TO MOTION TO DISMISS WRIT OF ERROR.

LORRIN ANDREWS,
Attorney for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 120.

HENRY C. HAPAI, G. W. A. HAPAI, AND NELSON K. SNIFFEN, PLAINTIFFS IN ERROR,

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MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF IN OPPOSITION TO MOTION TO DISMISS WRIT OF ERROR.

The motion to dismiss the writ of error is based upon the ground that in a jury-waived case the act of Congress of March 3, 1909, known as 35 Stat. L., 838, and further carried into the Judicial Code as section 246, does not apply, and counsel proceeds upon this presumption to cite cases

from various Territories of the United States, holding that appeal and not writ of error would lie in such an action as the one at bar.

It is respectfully submitted that this is not a proper interpretation of the act in question. The act clearly provides that "writs of error and appeals from the final judgments and decrees from the Supreme Court of the Territory of Hawaii may be taken and prosecuted to the Supreme Court of the United States within the same time, in the same manner, under the same regulations, and in the same class of cases in which writs of error and appeals from the final judgments and decrees of the highest court of a State, in which a decision in the suit could be had, may be taken and prosecuted (to the Supreme Court of the United States) under the provisions of section 237 (of the Judicial Code) and also in all cases where the amount involved * * * exceeds the sum of $5,000." Section 237 provides for writs of error from judgments and decrees of State courts.

The case at bar comes to this court on writ of error to the Supreme Court of the Territory of Hawaii in a case where the amount involved exceeds the sum of $5,000.

Hawaii became a Territory of the United States in 1900 under an act passed April 30, 1900 (31 Stat. L., 141). The act of March 3, 1909, chap. 269; 35 Stat. L., 833, was an amendment to section 86 of said act, which did not in any way change the mode of appeal or procedure in bringing cases to the United States Supreme Court. The original section provided:

> "The laws of the United States relating to appeals and writs of error, removal of causes and other matters and proceedings, as between the courts of the United States and the courts of the several States, shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."

This is the language of the section as amended.

It is hard to see where defendants in error make their distinction in the case at bar. The provision as to writs of error in the present amended act being the proper procedure, clearly refer to all cases where such writ of error would be allowed in the State court, to wit, in actions at law, and does not in any way attempt to vary the procedure in cases which come to this court, because the amount involved exceeds the sum of $5,000. The act of April 7, 1874, which is relied on by counsel for defendants in error, has been held repeatedly not to apply to the courts of Hawaii.

In Equitable Life Assurance Society *vs.* Brown, 187 U. S. Reports, 309, the syllabus reads:

> "The jurisdiction to review judgments or decrees of the courts of the Territory of Hawaii is to be determined, not by the law governing as respects Territories generally, but by Revised Statutes, section 709 relating to the power to review judgments and decrees of State courts." Revised Statute 709 requires review by writ of error from a final judgment of a State court.

Mr. Justice White, in delivering the opinion of the court, said:

> "The questions for decision arise on a motion to dismiss or affirm this writ of error which is prosecuted to a judgment of the Supreme Court of the Territory of Hawaii. The act of April 30, 1900, providing a government for the Territory of Hawaii, c. 339, 31 Stat., 131, enacts (sec. 86) that 'The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii.' It follows that the jurisdiction of this court to review judgments of the courts of the Territory of Hawaii is more restricted than is the jurisdiction to review the judgments of the courts of other organized Territories, and is to be measured by the

> power conferred upon this court to review judgments of State courts. Rev. Stat., § 709. In *Ex parte* Wilder's Steamboat Company, 183 U. S., 545, the distinction made by the law in question between Hawaii and other Territories was pointed out."

The question as to the construction of section 86 of the organic act of Hawaii, which as amended is the same section under which this proceeding is brought, was fully reviewed in the case of Wilder's S. S. Co. *vs.* Hind, reported in 108 Fed. Rep., 113. Judge Gilbert in rendering the opinion said (p. 115):

> "In section 86 we have the clearly-expressed purpose of Congress to provide that the laws of the United States relating to appeals, writs of error, removal of causes, and other proceedings, as between courts of the United States and the courts of the several States, shall govern in like matters and proceedings as between the Federal court and the territorial courts of the Territory of Hawaii. This can only be construed to mean that final decisions of the Supreme Court of the Territory of Hawaii may be reviewed in a court of the United States only in such cases and upon such conditions as the decisions of the Supreme Court of a State might be thus reviewed, or, in other words, that no appeal shall lie to any United States Circuit Court of Appeals from the final judgment of the Supreme Court of the Territory of Hawaii, and that the only appeal from such territorial court shall be to the Supreme Court of the United States, and only in such cases as are appealable to that court from the Supreme Court of a State. The right of appeal is statutory. If it exists in the present case, it must be found in the letter of the law. We are asked to apply to the statute certain rules of construction, but the language employed is not involved or ambiguous. Its meaning is evident upon the first reading. We must be guided by its plain import. * * *"

And again (p. 116):

> "The system of courts created by the act of the Territory of Hawaii differs radically from the system of courts which Congress had heretofore created for any of the Territories. In no other Territory has there been a division of jurisdiction between cases which properly belong to courts of the United States and other cases. Congress found in the republic of Hawaii a system of courts already established, whose jurisdiction was complete, and from the highest tribunal of which there was no appeal."

This court has considered writs of error in jury-waived cases and decided the same on their merits, and counsel is unaware of the question ever having been raised in any such cases. In the case of Damon *vs.* Hawaii, 194 U. S., 154, this court passed upon the fishery rights of Hawaii in a jury-waived case, where the court held that it was analogous to a bill to quiet title.

It is respectfully submitted that the attempt to make a distinction between two portions of section 86 of the organic act of Hawaii as amended, so as to require certain cases to come within the law, in regard to appeals from Territories, and as to reverse the holdings of this court and place a forced construction upon the clear wording of the section in question, which states that writs of error and appeals from the final judgments of the Supreme Court of the Territory of Hawaii may be prosecuted as from a final judgment of the highest court of a State, is far-fetched, without authority by law, and would do great injustice to litigants coming to this court in reliance upon what seems to be a clear construction of the statute in question. Counsel is unaware of any established practice such as set forth in the concluding paragraph of opponents' brief.

Respectfully submitted,

LORRIN ANDREWS,
Attorney for Plaintiffs in Error.

Supreme Court, U.S.
FILED
DEC 18 1915
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1915

NO. 120

HENRY C. HAPAI, C. W. A. HAPAI and NELSON K. SNIFFEN,

Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.,

Defendants in Error.

In Error to the Supreme Court of the Territory of Hawaii.

BRIEF FOR PLAINTIFFS IN ERROR

LOUIS ANDREWS,
Attorney for Plaintiffs in Error.

(24,146)

Supreme Court of the United States

OCTOBER TERM. 1915

No. 120

HENRY C. HAPAI, G. W. A. HAPAI, and NELSON K. SNIFFEN,

Plaintiffs in Error,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.,

Defendants in Error.

In Error to the Supreme Court of the Territory of Hawaii.

BRIEF FOR PLAINTIFFS IN ERROR

STATEMENT OF THE CASE.

This is an action to quiet title originally brought in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, and by stipulation (see page 5 of Transcript of Record) transferred to the First Judicial Circuit and there tried before the Hono[illegible]

able Henry E. Cooper, Judge sitting without a jury. The action involved the title of a large tract of land situated on the Island of Maui, Territory of Hawaii, and known as the Ahupuaa of Kaonoulu. It appeared on the trial of the case that both plaintiffs and defendants claimed title through one Keaka, a woman, who upon her death, devised this and other property by will. On the first trial of said cause, when the will of Keaka was presented as evidence, the Circuit Judge held that one Paakuku, a daughter of Keaka, by the terms of said will, became the owner in fee simple of said premises and, as the plaintiffs were claiming said premises through the brothers and sisters of Paakuku, by descent and purchase, he dismissed said complaint. The case was appealed to the Supreme Court of the Territory of Hawaii and, in a decision rendered on the 28th day of March, 1913, the Supreme Court reversed the decision of the Circuit Judge and held that, under the will of Keaka, Paakuku and her brothers and sisters held the property in question in fee as tenants in common. (See *Hapai vs. Brown,* 21 Haw. 499.) The case, then remanded to the Circuit Judge for further proceedings, duly came up for trial again on the 20th day of May, 1913, when plaintiffs closed their case, having proved that they were entitled in fee simple, by purchase and descent from Keaka, to 29/36ths of the said Ahupuaa of Kaonoulu.

The defendants then opened their case (see page 44 of Transcript of Record) and offered in evidence

a copy of the record in *Kahoiwai et al. vs. Paakuku*, No. 165 Equity Division, which said suit was begun in November, 1871, by some of the predecessors in interest of the plaintiffs for a partition of the lands in controversy here, and other lands, seeking other equitable relief in the way of enjoining waste on the part of a lessee of a portion of the lands, and to declare certain deeds given as fraudulent, etc. (See page 50 of Transcript of Record, Bill of Partition, *Kahoiwai et al. vs. Paakuku et al.*) The said record was offered for two purposes, one to show the adjudication of the legal title to the lands in controversy in favor of Paakuku, the predecessor of the defendants, the other to establish the execution and delivery to her of a deed in 1868 by the said testatrix Keaka. (See page 44 of Transcript of Record.) This offer of the said exhibit, the plaintiffs objected to on the ground that the same was not competent; that the attempted adjudication of the legal title in said equitable suit was without jurisdiction and void, and that the said record was not the best evidence of the deed sought to be established, was secondary evidence and therefore inadmissible. (See pages 44-45 of Transcript of Record.) These objections of the plaintiffs were overruled by the court and the said record admitted in evidence, to all of which plaintiffs duly excepted. The defendants then offered to put on evidence to prove the execution and delivery of the alleged deed from Keaka to Paakuku and to prove title to the land in controversy by ad-

verse possession, but the trial court declined to receive such evidence, holding that it was not necessary as, under the view of the court, the decree in the said partition suit (see page 100 of Transcript of Record) was conclusive upon the plaintiffs and precluded any recovery by them. (See page 46 of Transcript of Record.)

To this ruling the plaintiffs duly excepted. Thereupon, defendants having rested, plaintiffs offered in rebuttal Probate Record 1022, Vol. 22, being the probate of the will of Paakuku, Deceased, filed in 1876, subsequent to the decision of *Kahoiwai et al. vs. Paakuku*, to show that said decision was not considered as a decision of the title to the lands in question; but merely a dismissal of the action in partition because of the contest over the title to the land, which record of probate included a contest by some of the predecessors of the plaintiffs and a claim of the said predecessors of the plaintiffs that Paakuku did not own the lands in controversy, but only an undivided interest therein in common with the predecessors of the said plaintiffs. (See Transcript of Record, page 46, and Transcript of Record, page 47.) This was objected to by the defense as immaterial and not binding upon the defendants, and the objection was sustained. Thereupon plaintiffs offered in evidence the record of a Power of Attorney from said Paakuku to David P. Eldridge, Jr., recorded in Liber 44 in the office of the Registrar of Conveyances of the Territory of Hawaii, page 183, which said Power of

Attorney is fully set forth in the Appendix to Transcript of Record, pages 30-32, and is dated the 11th day of February, 1875, and in which the said Paakuku recites the fact that she holds the lands of Ahupuaa of Kaonoulu *by virtue of the Will of her mother, Keaka.* To this offer of proof, the defendants objected and the court sustained said objection, to which plaintiffs excepted.

The court then, on motion of the defendants, entered judgment in favor of the defendants on the records of the case as it then stood. (See page 48 of Transcript of Record.) From this decision of the court, plaintiffs appealed to the Supreme Court of the Territory of Hawaii on writ of error (see pages 111-116 of Transcript of Record), but by decision of the Supreme Court of the Territory of Hawaii (see page 118 of Transcript of Record) the assignments of error were not sustained and the judgment of the Circuit Court was affirmed. From this judgment, a writ of error was issued to the Supreme Court of the United States on the 6th day of January, 1914. (See pages 125-133 of Transcript of Record.)

ARGUMENT.

I.

The first, third and fifth assignments of error, covering the same subject matter, will be argued together. The assignments of error are:

FIRST: The court erred in sustaining the Circuit Court of the First Judicial Circuit in admitting

in evidence for the purpose of showing a former adjudication of the issue in the case, Defendants' Exhibit 1, the same being a copy of the record in the Equity proceedings between Kahoiwai and others, named as complainants, and Paakuku and others, named as defendants, No. 165 in the Equity Division of the Supreme Court, for the partition of the lands which are the subject matter of this action, the admission of the same in evidence for such purpose, being error, objected and excepted to by the plaintiffs, for the following reasons, namely:

(a) The said decree in the said Equity proceeding, or suit, was without jurisdiction in the Hon. Elisha H. Allen, as Chief Justice at Chambers, to make and render, the said Equity suit or proceeding being for purely equitable purposes, as shown by the said Exhibit 1, and in same the said Chief Justice, at Chambers, had no power, jurisdiction or authority to adjudicate a disputed legal title to the lands in controversy.

(b) The said Exhibit 1 was not competent nor material nor relevant to prove any issue in the case, the said adjudication being without authority and void.

(c) The said Exhibit 1 was not competent to prove the execution and delivery by Keaka to Paakuku in the year 1868, of a deed conveying to said Paakuku the lands in question in this case, the same being secondary evidence and objected to by the plaintiffs on that ground.

THIRD: The court erred in sustaining the Circuit Court of the First Judicial Circuit in holding that the said Exhibit 1 proved an adjudication and determination of the title to the lands in controversy in favor of the predecessor of the defendants, and that same was, and is, binding upon the plaintiffs in error, for the reasons given in the first assignment of error herein.

FIFTH: The court erred in sustaining the Circuit Court of the First Judicial Circuit in holding that the said adjudication by the Hon. Elisha H. Allen, Chief Justice, at Chambers, was a final adjudication of the legal title in Paakuku, and in holding that the same is binding on the plaintiffs, and precludes them from a judgment quieting their title to undivided interests in the lands in controversy, to the prejudice of the plaintiffs, to all of which the plaintiffs duly excepted.

It will be seen from a careful examination of the case, that the trial court looked only at one phase of the action as it did at the former trial—when it passed upon the will of Keaka. (See *Hapai vs. Brown*, 21 Haw. 499.) The court practically decides one question only, to wit, that the decision of Chief Justice Allen in the partition suit, rendered at Chambers, in October, 1874 (see page 100 of Transcript of Record), was an adjudication of the title to the property in controversy here, binding upon the plaintiffs and precludes them from recovery, the court refusing to allow in evidence matters of estop-

pel. In other words, the court held that the said decree was *res adjudicata* on the subject matter of this action. In this connection, we call attention to the entire record, which shows that the former suit was a partition suit in which the following orders appear:

The opinion of Chief Justice Allen appears on pages 96 to 98 of the Transcript of Record. In closing the opinion, the Chief Justice said:

"The court is of the opinion that the petitioners have no title to the lands of Kaonoulu and Kaluapulu and so adjudge.

There is no controversy about the title of the land in Wailuku and the petition for partition of that land is hereby granted and decree accordingly."

On page 100 of the Transcript of Record, we find the decree of the court, signed by the Chief Justice, dated October 12, 1874, which, after the entitling, recites as follows:

"Decree of Court.

It is ordered, decreed and resolved by the Court here that the said Complainants take nothing by their Bill and that defendants have and to recover their costs herein incurred.

Honolulu, H. I., Oct. 12, 1874.

ELISHA H. ALLEN,
Ch. Jus. Sup. Court."

We further find a minute entry of the Clerk on page 105 of Transcript of Record, which states:

"Supreme Court of the Hawaiian Islands, 1st Oct'r, 1874. Oahu, ss:

Before Chief Justice Allen, 12:30 P. M., at Chambers.

In the Matter of Kahoiwai et als.
vs.
Paakuku (w) et als.

Chief Justice Allen renders his decision—which is filed.

Present:

R. H. Stanley, W. C. Jones, for plaintiffs.
A. S. Hartwell, for respondent.

The opinion of the Court is that the Petitioners have no title to the lands of Kaonoulu and Kaluapulu and so adjudge.

There is no controversy about the title of the land at Wailuku and the petition for partition of that land is hereby granted and decreed accordingly.

Appeal noted by Plaintiff.

W. R. SEAL, Clerk.

Supreme Court.
In Equity.

Before Chief Justice Allen, at Chambers, 12 Oct'r, 1874.

Kahoiwai et al.
vs.
Paakuku & alt.

Mr. R. H. Stanley for Complainants.
A. S. Hartwell for Defendants.

The Court order decree entered, and the Complainants submit themselves to the judgment of the Court and go no farther.

JNO. E. BARNARD,
Deputy Clerk."

The only decree rendered in the case, if it can be called a decree, is that entered on the 12th day of

October, 1874, signed by the Chief Justice and found on page 100 of the present Transcript of Record, which in fact simply amounts to a dismissal of the bill of the complainants. Probably after rendering his opinion on the 3rd of October, 1874, and nine days thereafter, the Honorable Chief Justice came to the conclusion that he had no jurisdiction to render any decree, except one dismissing the bill FOR WANT OF JURISDICTION, notwithstanding the opinion he had filed. The decision, which when the record is carefully examined, amounts to nothing more than an opinion, should not be regarded as *res adjudicata* for reasons hereinafter given and, further, the last lines of said opinion show that the judge clearly had in view the question of conflict of title as affecting the court of equity's right to render a judgment, when he said:

"There is no controversy about the title of the land in Wailuku and the petition for partition of that land is hereby granted and decree accordingly."

When the title to the land became a matter of legal contention, through the answer of the defendants, the Chief Justice, sitting at Chambers, in the partition suit, lost jurisdiction and the only thing he could do that would bind the parties was to either dismiss the suit, or else continue it until in an action at law, the title should be determined. There was no statute authorizing the Chief Justice, at Chambers, to determine in a partition suit a controversy between parties claiming as co-tenants on the one

hand, and another party claiming the entire legal title on the other. This has been the universal holding of the Hawaiian courts until the decision of the case at bar, from which this writ of error has issued.

"The jurisdiction in respect to titles of real estate is in courts of common law, which Courts of Equity should hesitate to invade; especially so in the case at bar, where the plaintiffs' title is alleged to be by prescription, and this is traversed by the answer, and therefore the decision of the case depends upon facts and questions peculiarly suitable for trials at law, where parties can have a jury of the country to pass upon the facts."

Kaaimanu vs. Kauwa and Koa, 3 Haw. 612.

"Equity has cognizance of an equitable title, whether the complainant be in or out of possession. If the title claimed be legal in its nature, and the complainant be out of possession, and a resort to ejectment will relieve him, equity will decline jurisdiction."

Kapuakela vs. Iaea, 9 Haw. 555.

"In a suit brought against a widow for the admeasurement of dower, where the widow denies she has any dower right, a circuit judge at chambers has no jurisdiction to determine the right of the dower."

Ahin vs. Opele, 17 Haw. 525.

"A bill for partition cannot be made a means of trying a disputed legal title. If, in a suit for partition, an issue is in good faith raised concerning the extent of the petitioner's interest in the land, the proper course is to suspend the bill and give the petitioner an opportunity to sue."

Kaneohe Rice Mill Co. vs. Holi, 20 Haw. 609.

"In a suit for partition where the answer of respondent made under oath, is responsive to the bill

and denies the co-tenancy of the parties to the suit and the complainant's legal title to, as well as the possession of the premises and sets up legal title to the premises and exclusive possession thereof in the respondents, a court of equity will decline juridiction to try this question of disputed title."

Brown vs. Davis, 21 Haw. 327.

"It will be observed that the answer of the respondent, which was made under oath, is not a mere denial of the complainant's title, but it also sets out in circumstantial detail the facts, including the dates, record and character of the muniments of title, upon which the respondent bases his claim of ownership and right to the exclusive possession of the premises. In the absence of any showing to the contrary we must assume that the answer was filed in good faith and upon the bona fide belief of the respondent that the facts therein stated were true. With the pleadings in this case now before us, it is impossible to escape the conclusion that the legal title to the premises is in dispute. The question thus presented does not fall within the province of equity for determination, but is one for consideration in an action at law. This view is sustained by the authorities.

As to what would have been the proper procedure if the answer of the respondent had contained only a bare denial of the complainant's title, we express no opinion.

The circuit judge was right in denying the motion to set the cause for trial until the complainant shall have determined his title at law; provided, however, that action to that end shall be taken within a reasonable time.

The order appealed from is affirmed.

Brown vs. Davis, 21 Haw. 329-330.

A short study of the case of *Kahoiwai vs. Paakuku,* which the trial judge in the case at bar allowed

in evidence and ruled was *res adjudicata,* may possibly be of interest in adjudging how far the decree in that case is *res adjudicata* in the case at bar. On the 3rd day of November, 1871, a bill of partition was filed by one Kahoiwai and others, against one Paakuku, in which the court was asked to partition the land of Kaonoulu, the land of Kaluapulu and certain land in Wailuku and, further for an injunction against certain others, named as defendants, and for relief against waste. With this claim, certain exhibits were filed bearing out the contention of the plaintiffs. To this complaint, the several defendants answered, denying the allegations as to waste, etc., and the defendant, Paakuku, in her answer (see page 77 of Transcript of Record) set up that she was the sole owner of the property by reason of the Will of Keaka, her mother, and further by reason of a deed which she claimed Keaka had made to her before her death. Upon these pleadings, a trial was held and testimony given, with the result that the trial judge, Chief Justice Allen, sitting at Chambers, in Equity, rendered the opinion already referred to, upon which was entered the decree dismissing the plaintiffs' bill. We submit that this adjudication was no more than an ordinary adjudication of a court in equity, which had no jurisdiction to try the title of land and, after hearing the testimony that there was a bona fide contest as to the title of the land, he decided that the court had no jurisdiction. Even if the learned judge did not so

decide, but in line with his opinion, attempted to adjudicate the legal rights of the parties, the decision, as far as this matter goes, is void for want of jurisdiction and the decree can only bind the parties as far as the dismissal of the suit of partition is concerned.

Our contention in this matter, we submit, is in accordance with the well settled general rule of law in regard to such cases.

"The general rule is well settled that a court of equity does not interfere unless the title be clear and never when the title is doubtful, until the party seeking a partition has had an opportunity to try his title at law."

4 Kents Com. 365.

If the contest concerning the title is not in good faith or presents equitable questions, then equity may proceed; but it will never do so when a claim is made absolutely disputing the title of the petitioner.

"It is certain that courts of equity, in assuming jurisdiction of the subject of partition, always disclaim the authority to determine doubtful questions in regard to the legal title."

Freeman Co-Tenancy and Partition, Sec. 502.

"A bill for a partition cannot be made the means for trying a disputed title."

Bispham's Equity, 535.

"To entitle a plaintiff to a decree for partition, he must show that his legal title is clear * * *. The doctrine almost universally held is that if the plaintiff's legal title is involved in doubt and is dis-

puted and not established * * *, the court will retain the bill to give the plaintiff a reasonable opportunity to establish his title at law and, when he has done that, decree the partition according to his established right.

Nash vs. Simpson, 78 Me. 142-150.

"Courts of equity do not generally settle the conflicting titles of parties in their suits for partition, hence, to entitle the plaintiffs to a decree for partition, they must show a clear legal title."

Pierce vs. Rawlins, 83 Me. 172-177.

"Such a proceeding (to settle the title in a partition suit) violates well settled principles and is against the practice of a Court of Chancery, unless the dispute is in regard to an equitable title."

Chapin vs. Sears, 18 Fed. 814.

"So far as general principles go, we certainly could not reverse the decision of the Court of Appeals, that the petitioners ought to establish their title at law before the partition should be decreed * * *. A bill for partition cannot be made a means of trying a disputed title."

Clark vs. Roller, 199 U. S. 541.

"Where the answer for a bill of partition for real estate entirely denies the title set up by the complainant, equity assumes no jurisdiction."

Brown vs. Cranberry Iron & Coal Co., 72 Fed. Rep. 96.

"A bill of partition will not lie when the legal title is denied, or where it depends on doubtful facts or questions of law. Where one is filed and pleadings or proof show a dispute about the legal title of the real estate to be divided, the usual course is for a court of equity to retain the bill until the title is settled at law."

Chapin vs. Sears, 18 Fed. Rep. 814.

"In a partition suit, the title is not meddled with, but the plaintiff must show a clear legal title; hence, if he prays a settlement of boundary and a decree for the delivery of land in the defendant's possession, it is not a proper case for partition in equity. Accordingly it is established by the cases that the plaintiff who comes into equity for partition, must show a clear legal title. If there be doubt about that, he will not be aided as this court has no jurisdiction to interpose in questions of real property."

Stewart's Heirs vs. Coulter, 15 Am. Dec. 731.

"The concurrent jurisdiction of a court of chancery to entertain suits for partition of lands has long been established, and has often been exercised, both in England and in this country, WHERE THE LEGAL TITLE IS UNDISPUTED. When the defendant denies the title of the complainant and his right of joint possession, it is the usual practice of a court of chancery to retain the bill, stay the proceedings, and allow the complainant a reasonable time for trying his title, and re-establishing the unity of possession with his alleged co-tenant by an action of ejectment. QUESTIONS PERTAINING TO A LEGAL TITLE AND THE NATURE OF POSSESSION ARE MATTERS OF LAW, AND SHOULD BE DECIDED BY A COURT AND JURY IN A LEGAL TRIBUNAL."

Brown vs. Cranberry Iron & Coal Co., 40 Fed. Rep. 850.

"To entitle complainants in equity to a decree in partition, they must show a clear legal title and, if the title is denied in the answer and by testimony * * * a bill will be retained a reasonable time to allow the complainants to establish their legal title, if they desire so to do; otherwise, it will be dismissed with costs."

Pierce vs. Rawlins, 83 Me. 172.

"Purely legal titles are to be tried at law where a jury is a matter of right, unless there is some impediment to such trial which requires the aid of a court of equity to remove. When the complainant is not in possession and the case shows an ouster and an adverse possession and the legal title is not clear and beyond suspicion, the appropriate remedy for the trial of the title and the obtaining of possession is by an action of ejectment and not by a bill in equity for a partition."

Hoffman vs. Beard, 22 Mich. Rep. 59.

It is further respectfully submitted that regardless of what the Judge intended to do in the case of *Kahoiwai vs. Paakuku,* his decision and the decree can only be considered as a decree affecting the rights of the plaintiff to have partition in view of the fact that there is a dispute as to the legal title and that a court of equity could not pass upon the legal title in such a case and bind the parties.

"Thus it will be seen that this is a case of a disputed title to lands and the reason for declining a partition by the defendants is that the complainants have no rights in the premises. This is not the action, no rthe forum, to try a question of this character and every rule of propriety forbids that a suit for a partition should be made a mode for trying the legal title to lands. The rule in such cases is to retain the suit until the complainants shall establish their right by law. A contrary practice would answer no valuable purpose, *as neither party would be bound by the decision here made* * * *. If a partition should now be ordered and upon a trial at law, it should be decided that the complainants had no title, injustice would be done the defendants. IT IS THE LEGAL TITLE ALONE, in this case,

THAT CREATES ANY DIFFICULTY, and not an equitable one.

Manners vs. Manners, 1 Green's Ch. 384, id. 35 Am. Dec. 512.

This decision that a court of equity would have no jurisdiction to bind either party, but would simply dismiss the bill, has been followed and re-affirmed by many courts.

"When the statement of the title shows a disputed or legal title, THE COURT COULD DISMISS THE BILL and send the complainant to law, or maintain the bill until a court of law had sealed the title."

Keil vs. West, 21 Fla. 508-525.

"It is the established rule of this court, where the title of the complainant is disputed, not to settle it upon the hearing here, but to compel the complainant to establish his title at law first."

Hay vs. Estell, 18 N. J. Eq. Rep. 252.

"The defendants deny the complainants' title. If the title in dispute is an equitable one, it is the duty of this court to settle it. If it is a legal title, THE COURT MAY DISMISS THE BILL or retain the cause and afford the party an opportunity of settlin his title at law."

Lucas vs. King, 10 N. J. Eq. Rep. 280.

"A suit for partition wherein an issue is made as to plaintiff's legal title WILL GENERALLY BE DISMISSED, or proceedings therein stayed until that issue is determined at law, when it appears by either pleadings or proof that plaintiff is in position to bring ejectment."

Tobin vs. Tobin, 45 Wis. 299.

"The established rule undoubtedly is that upon

bill for partition of lands, if the legal title of the parties is brought into dispute, a court of equity will not proceed to settle the disputed title; but will either DISMISS THE BILL or retain it to allow the legal title to be settled in an action at law."

Stockbower vs. Kanouse, 50 N. J. Eq. Rep. 481.

"The answersof both defendants deny the complainants' title and Geo. H. Horton sets up title in himself. Under this set of facts, it was error to decree partition. Questions of title cannot be tried in a bill of partition. When an estate is legal and the question of construction is a legal one, a bill for partition will not lie. The bill ought to have been dismissed, or at least the proceedings ought to have been stayed until the right was established at law. THE BETTER PRACTICE IS TO DISMISS THE BILL since the right must be perfect at the filing of the bill and cannot be aided by subsequent events. (*Brinkerhoff vs. Brown,* 4 Johnson Ch. 671.)

Horton vs. Sledge, 29 Ala. 478-484-485.

"The rule of equity jurisdiction is well settled, that the court will not interfere unless the complainant's title be clear and will never grant the relief (partition) when the title is faulty or suspicious, unless the party seeking relief has established his title at law."

Sherer vs. Winston, 33 Miss. 149-151.

Bill for partition denied. In this case, a bill for partition was dismissed on the ground therein stated.

"The answers of the widow and child challenged the title of the complainant. This condition of affairs deprives this court of jurisdiction to proceed

with this suit until the legal title is settled by an action at law."

Ellis vs. Feist, 65 N. J. Eq. Rep. 548.

"This was an action for partition in which the answer denied the title of the plaintiff and set up the title in the defendants. On a bill for partition, if the legal title to the land is put at issue, the court of chancery will not proceed to settle such title, but WILL EITHER DISMISS THE BILL OR RETAIN IT TO ALLOW THE TITLE TO BE SETTLED IN AN ACTION A LAW."

Havens vs. Seashore Land Co., 57 N. J. Eq. Rep. 143.

"The question presented by the answer, that on which the title of the complainants depends, is one of illegitimacy * * *. If in a suit for partition, the plaintiffs' title is denied and the title which is disputed is a legal one, the COURT MAY DISMISS THE BILL or it may *ex gratia* retain the case to afford the complainant an opportunity to settle his title at law; BUT IT WILL NOT DO MORE."

The Riverview Cemetery Co. vs. Turner et al., 24 N. J. Eq. Rep. 18.

"Viewed in this light, it seems to us to be an action of ejectment in the form of a bill in chancery. According to the bill, excluding what relates to the alleged fraud, there is a plain and adequate remedy at law, and the case is one peculiarly of the character where, for that reason, a court of equity will not interpose. This principle in the English equity jurisprudence is as old as the earliest period in its recorded history. * * *

In the present case the objection was not made by demurrer, plea or answer, nor was it suggested by counsel; nevertheless if it clearly exists, IT IS THE DUTY OF THE COURT *SUA SPONTE* TO RECOGNIZE IT AND GIVE IT EFFECT. * * *

It is the universal practice of courts of equity to dismiss the bill if it be grounded upon a merely legal title. In such case, the adverse party has a constitutional right to a trial by jury."

Louis vs. Cocks, 23 Wallace 471.

In closing the argument upon these assignments of error, we submit the argument in two cases as peculiarly applicable to our objections, in the case at bar, to the ruling of the court upon the force and effect to be given to the decision in the case of *Kahoiwai vs. Paakuku.*

"In this case where a bill for partition was filed and the defendants denied the ownership in the land, a hearing was had, and upon proofs, the bill was dismissed, *held that the title to the land was not decided by the suit, but an action in ejectment must be begun to settle that matter.* It will be thus seen that the whole contest, as disclosed by the pleadings, is upon the legal title to the lands, and not upon any question of the necessity, propriety or mode of partition, nor upon any equity connected with either the title or the partition; *that complainants are out of possession, and the defendants in, claiming the whole adversely;* that complainants' title, if good at law, would enable them to maintain ejectment without the aid of a court of equity. All the questions, arising upon the titles set up on both sides are peculiarly fit and appropriate for trial at law in an action for ejectment, and no obstacle exists to such a trial.

Such is the case as presented by the bill and answer. But it is unnecessary to determine whether the question of the right to maintain such a bill can properly be raised upon the pleadings alone, as one strictly of jurisdiction, as some of the decisions would seem to indicate; or whether the court, notwithstanding the denial of complaniants' title, are to look into the evidence and sustain the bill, if the

complainants' legal title is so clear as to leave no serious question, as seems to be inferable from some of the cases; since it appears *by the evidence in this case,* more clearly than from the pleadings, that the WHOLE CONTROVERSY between the parties and other people connected with it, RELATE EXCLUSIVELY TO THE LEGAL TITLE asserted by the defendants, without a single feature requiring the aid of a court of equity; that there is no obstacle to the trial of the title at law. It shows also that the complainants have never been in possession and certainly tends to show a disseizin of Scott (under whom complainants claim) nearly if not more than 20 years prior to the filing of the bill by the defendants and those under whom they claim, and an adverse possession and claim of title of the whole during that time; that complainant's alleged title, purely legal in its character, is contested in good faith, and that many important questions, both of law and fact, are raised touching the appointment of the administrator, and the regularity and validity of the proceedings for the sale, which are peculiarly appropriate for trial at law. And judging from the pleadings and proofs, the main purpose of the bill would seem to be, rather to try the LEGAL TITLE THAN TO OBTAIN A PARTITION, as no question whatever is raised in the case except what grows out of the alleged want of title of complainants. Under our statute we have provided an action of ejectment for the trial of the legal title and the obtaining of possession when wrongfully withheld, whether of the whole or an undivided portion, and for a bill in chancery for the partition of lands held by tenants in common and joint tenants, it certainly cannot be claimed that these are intended as elective remedies, applicable generally to the same set of facts and opportunity adopted by parties at their option. And I can see little more reason to suppose the legislature intended the bill for partition as a remedy for the recovery of the possession of lands upon a purly legal title, in a case entirely appropriate for eject-

ment, than that ejectment might be substituted for partition, especially as the defense in ejectment is entitled to two trials before a jury as a matter of right, and to a third, if the court think justice will be thereby promoted; while in the partition suit, where he has no right to demand a jury at all, a single trial is to be final and conclusive and the privilege of several jury trials might be thus taken away in all cases where an undivided portion only is claimed.

The special province of a bill for partition is to sever the joint possession, so that each may enjoy his share in severalty, and not to try legal titles. The title of the parties may, in one sense and to some extent, be said to come in question in all cases of partition by bill, but it is rather incidentally and formally. The usual course is to have a reference to a master or commissioner to ascertain and report upon the title, a mode obviously inadequate to a full and fair trial of a contested legal title, and only properly applicable where there is no real contest upon it."

Hoffman vs. Beard, 22 Mich. Rep. 62-63-64.

"It is the final order in the case and its execution that deprives the appellant to title to property, by which he would be materially injured. If enforced, the appellant will be compelled to convey to each of the appellees the title to the property which he holds adversely to them, and which he has always insisted upon as being adverse and paramount. Courts of equity have undoubtedly the power to make an equitable partition of land, but they have NO JURISDICTION TO TRY THE CONTROVERSIES ABOUT THE TITLE. In the original bill, Walker set out his adverse title and his exclusive possession, yet the court proceeded to divest him of his title and invest it in others * * *. We think when this state of case was disclosed, the court should have suspended proceedings until the title could have been allowed at law. If courts of equity WITHOUT

POWER OR JURISDICTION TO TRY QUESTIONS OF TITLE, such as those presented in this record, can proceed not only to make an equitable partition, but also to compel a conveyance by the tenants, while in possession, claiming the land adversely, and this court has no power of correction, the action of ejectment could be dispensed with. We think the act of the court in ordering conveyance to be executed in pursuance of such a decree and surrendering the possession, is not an act of discretion merely, but its propriety and justice can and should be examined by this court * * *. Upon authority, we think the question clear that a court of equity will not make partition of land unless the title is clear, but leave a party to proceed and establish his title at law, unless it be a purely equitable title. (1 Story's Eq. Jur., Sec. 563.)

In this case, there were no equities whatever between the parties. THE TITLES PRESENTED WERE LEGAL TITLES AND WE THINK IT IS GOING TOO FAR TO ADJUDICATE UPON SUCH, merely because the solicitors of one of the parties did not object when the party interested had, by his answer, distinctly insisted upon his adverse and paramount title."

Walker vs. Laflin, 26 Ill. Rep. 473-475-476.

In regard to the objection made in the First assignment of error (c), that the record in the case of *Kahoiwai vs. Paakuku* was not competent to prove the execution and delivery from Keaka to Paakuku in the year 1868, of a deed conveying to the said Paakuku the lands in question in this case, the same being secondary evidence and objected to by the plaintiffs on that ground, we submit that the objection was well taken and it is clear that it should have been sustained. As, however, the trial court

did not admit the record for the purpose of admitting the said deed, we submit that the question of the materiality or sufficiency of the deed is not before this court at this time and, if the court decides in favor of plaintiffs in error, that the question is still open for us to object to the sufficiency of the alleged deed at the next trial. (See page 45 of Transcript of Record.)

"MR. ANDREWS: Does your Honor hold that your Honor—these are admitted for the purpose of proving that deed?

THE COURT: No.

MR. ANDREWS: The validity of the deed or not? It is merely as to an adjudication by the court on this action?

THE COURT: I limited my ruling to that effect.

MR. ANDREWS: Yes."

In passing, it might be called to the court's attention that what was offered in the record of *Kahoiwai vs. Paakuku* was not the deed itself, but a copy thereof (see page 87 of Transcript of Record and translation on page 23 of Appendix to Transcript of Record) and no explanation was made as to why the original deed was not offered in evidence. The laws of the Territory of Hawaii provide for the registering of deeds and that the record of such registration may be read in evidence with like force and effect as the original instrument. (Sec. 3117, Revised Laws of Hawaii 1915, also *Hong Quon et al. vs. Chea Sam et al.*, 14 Haw. 276.) Nothing of this kind was attempted to be offered in this case. Defendants

simply attempted to put in a copy of a deed with no proof that it had ever been recorded or offering any reason why the best evidence was not produced before thus offering secondary evidence.

II.

Under this head will be argued the Second and Fourth assignments of error, which are as follows:

SECOND: The court erred in sustaining the Circuit Court of the First Judicial Circuit in refusing to permit the plaintiffs, after the defendants had closed their case, to introduce in evidence, the record of a power of attorney executed February 11th, 1875, by Paakuku to D. P. Eldridge, Jr., recorded in Liber 44 at page 183, and in the following words, to-wit: (See translation, pages 30 and 32, of Appendix to Transcript of Record.)

"STAMPED

Know all men that I, L. Paakuku of Kaonoulu Kula Maui Hawaiian Islands, do make, appoint and nominate, and by this document I have made and appointed David P. Eldridge, Jr. of Honolulu, Oahu, as my attorney and for me and in my name to do and to appoint and perform in all the rights appertaining in all the real and personal property of the estate of Keaka deceased. Such properties being situate within the Hawaiian Islands and to lease the real estate for some good rental and to sell or assign the personal property and to make and affirm the leases in my name for the interest and benefit of the real estate and to give bills of sale for the personal property and to take and perform all the powers of the rights in every real estate and personal property, whereas all that belonged to Keaka

deceased are mine and belong to me as bequeathed by her last will and testament.

And there will be given into the hands of my said attorney the absolute power to do to everything pertaining to the properties, and he has the power to adjudicate all the income according to what I am setting forth in this Document with the absolute power given him.

And by this, whatever my attorney has done or given shall be deemed to be true if he consents or had done in accordance with the statement herein made.

As witness of this I herewith set my name and affix my seal this 11th day of Feb., A. D. 1875.

Her
L. Paa X kuku.
Mark.

Witness

John H. Paty
Hawaiian Islands
Island of Oahu ss:

On this tenth day of February A. D. 1875 before me personally appeared L. Paakuku, known to me to be the person described in and who executed the annexed instrument, and who acknowledged that she executed the same for the uses and purposes therein set forth.

John H. Paty,
Notary Public.

Recorded & Compared this 6th day of December, A. D. 1875, at 11 o'clock A. M.

Thomas Brown,
Registrar of Conveyances."

FOURTH: The court erred in sustaining the Circuit Court of the First Judicial Circuit in refusing to permit plaintiffs to introduce in evidence Pro-

bate Record 1022, Vol. 13, Fol. 539, the same being the record of the probate of the will of Paakuku in the year 1876, with all papers relating thereto, including contest by some of the brothers and sisters of Paakuku to the probating of the will on the ground that Paakuku lived and died on the Island of Maui, and that she did not own all of the land which she had attempted to will, but only owned an undivided interest in it with her said brothers and sisters. Said Probate Record was offered by the plaintiffs to show that the said adjudication was not regarded by the devisees of Keaka as binding, and in conjunction with the said power of attorney to D. P. Eldridge, Jr., from Paakuku, to show that the said Paakuku did not consider the said adjudication in the partition suit as binding, and did not rely on same, and said Record should have been received in rebuttal of the estoppel claimed by defendants, and its rejection was error prejudicial to the plaintiffs.

The record of said power of attorney, which was duly offered in accordance with the practice in the Territory of Hawaii (see Sec. 3117 of the Revised Laws of Hawaii 1915), was offered to show that Paakuku, long after the alleged execution of a deed to her of the lands in controversy by Keaka, claimed not through or under such alleged deed or by virtue of the decision of Chief Justice Allen in the case of *Kahoiwai vs. Paakuku;* but through and under the will of Keaka alone, thereby corroborating the contention of the plaintiffs that the decision of Chief

Justice Allen was a mere dismissal of the bill of partition in the case of *Kahoiwai vs. Paakuku* and did not adjudicate the rights of the parties, nor was it so considered by them.

The Record of Probate of the estate of Paakuku was offered to show that the other heirs and devisees of Keaka did not recognize the said adjudication in the case of *Kahoiwai vs. Paakuku* as binding upon them, but that all the parties regarded and treated the alleged adjudication as a mere dismissal of the equity action and otherwise as void and of no effect. Plaintiffs therefore claim that said records, both power of attorney and Probate Record, are admissible to refute the idea of an estoppel in favor of Paakuku and her successors and to establish an estoppel on the part of the defendants in error from claiming under said adjudication and from claiming under said alleged deed. The court declined to hear any evidence on behalf of the respective parties after the introduction of the record in the case of *Kahoiwai vs. Paakuku* and rendered a decision and decree in favor of the defendants in error on this point alone. (See decision of Circuit Court on page 109 of Transcript of Record.) In this decision the court states that the adjudication in that case is binding upon the plaintiffs in this action and that he has refused to go into that defense on the ground that the former adjudication in the case of *Kahoiwai vs. Paakuku* is conclusive of this case.

In presenting these assignments of error, plaintiffs

in error would like to call the court's attention to the following matters connected therewith. The power of attorney made by Paakuku to David P. Eldridge, Jr., on the 10th day of February, 1875, and translated on pages 30 and 32 of the Appendix to Transcript of Record, was made several months after the termination of the partition suit of *Kahoiwai vs. Paakuku* and shows very clearly that Paakuku claimed the land under the will of Keaka and not under any decree or right which she had by virtue of the decree in the partition suit, or by virtue of any deed claimed therein. It is submitted that it was evidence tending to establish an estoppel by proving that Paakuku claimed under a different claim than that under which the defendants in error are now claiming.

"Where the affidavit of the wife to the effect that her husband is in debt to her for paraphernal funds received and used by him, is made and recorded with his knowledge and his consent, and is allowed to remain unchallenged on the public records until after the wife dies, and her heirs, upon the petition of the husband, are put in possession of her estate, during which time it is recited in authentic acts to which the husband is a party, as a valid subsisting mortgage, the husband is estopped to deny the verity of the claim represented by such affidavit and cannot be heard to say, as against the heirs of the wife, that it is fictitious and was intended merely to protect his property from creditors."

Kronenberger vs. Hopkins et al., 35 So. Rep. 618.

See also
Palfrey vs. Stinsin, 11 La. Rep. 77;
Lilley vs. Adams, 108 Mass. 50;
Miles vs. McNaughton, 111 Mich. 350-353.

In this connection, we would call attention to the fact that at a former hearing of the case at bar (see *Hapai vs. Brown*, 21 Haw. 499), the defendants in error claimed under the will of Keaka and that said will made Paakuku the sole devisee of the land in controversy, a contention which the Supreme Court of Hawaii refused to sustain—taking the opposite view. (See *Hapai vs. Brown* supra.)

Having failed under the claim made by Paakuku, that she took under the will, defendants in error now fall back on the claim that the decision in the partition suit, or in other words, the opinion of Chief Justice Allen, sitting at Chambers, in Equity, is *res adjudicata* of their title.

We submit that the power of attorney was evidence that Paakuku did not take or claim anything under the opinion of Chief Justice Allen and that the refusal to admit in evidence the offered document was error prejudicial to the plaintiffs in error.

The plaintiffs in error offered in rebuttal, the record of the estate of Paakuku, Probate Record 1022, Vol. 13, Fol. 539, for the purpose of showing that in 1876 the children of Keaka did not regard the termination of the partition suit as decisive of their rights in the lands in controversy and that this record, in connection with the power of attorney from Paakuku to Eldridge, tended to prove that the

predecessors in interest of the defendants in error and the predecessors in interest of the plaintiffs in error all regarded the partition suit and determination thereof as of no binding force whatever. For the reasons also stated in regard to the court's refusal to admit the power of attorney, we submit that the court, in refusing this testimony, committed prejudicial error.

It is, therefore, respectfully submitted that the judgment of the Supreme Court of Hawaii and of the Circuit Court should be reversed.

LORRIN ANDREWS,
Attorney for Plaintiffs in Error.

Dated, Honolulu, T. H.,
November 23, A. D. 1915.

Miss Supreme Court, U. S.
FILED
DEC 13 1915
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 120.

HENRY C. HAPAI, G. W. A. HAPAI, AND NELSON K. SHIFFEN, PLAINTIFFS IN ERROR,

vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL., DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

A. A. WILDER,
ALEX. BRITTON,
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Attorneys for Defendants in Error.

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Statement of the Case.

is is a writ of error to review a judgment of the Sue Court of the Territory of Hawaii, the opinion being ted in 21 Hawaii, 756 (Tr., pp. 117-124), the case ng to this court on the ground that more than five thoudollars was involved (Tr., pp. 125, 130).

aintiffs in error, who were plaintiffs below, instituted st defendants in error, who were defendants below, an n at law to quiet title to a large tract of land called oulu, situated on the Island of Maui, Territory of ii, claiming individual interests in fee-simple in said the pleadings being found in the Transcript, pages Jury was waived (Tr., p. 109), and the trial court

rendered judgment for defendants, holding that plaintiffs had no title to said land and that defendants owned the same in fee-simple (Tr., p. 109). On writ of error the Supreme Court of Hawaii affirmed the judgment of the trial court (Tr., p. 124).

The assignments of error are five in number (Tr., pp. 126, 129), but the second and fourth assignments are abandoned because of a stipulation between the parties eliminating from the record here the evidence on which those assignments were based (Tr., pp. 134-135). The remaining three assignments of error all turn on whether the Supreme Court of Hawaii was right as a matter of law, the evidence being undisputed, in holding that the determination of the title to this land by a court of equity in 1874 in a suit for partition, made without objection by any of the parties and not appealed from, is valid and binding upon the same parties and their privies in a subsequent action involving the same land.

ARGUMENT.

Plaintiffs in Error Barred by Former Adjudication.

If this case is to be considered on its merits, then we contend that the judgment below must be affirmed, because plaintiffs in error are barred by a former adjudication (Tr., pp. 49-108).

Plaintiffs claimed their interest in the land by virtue of a will of one Keaka, dated February 12, 1850. Keaka died March 17, 1868, and her will was admitted to probate on December 15, 1868. Defendants claimed title to the whole land, first by virtue of a former judicial adjudication; second, by descent and mesne conveyances, and third, by adverse possession. The trial court, being of the opinion that the claim of *res judicata* was good, declined to receive evidence of the other defenses.

The claim of *res judicata* was shown by a certified copy

of the records of the Supreme Court of Hawaii in a case entitled Kahoiwai *et al.*, including the predecessors in interest of plaintiffs, *vs.* Paakuku *et al.*, including the predecessors of defendants, including as a part thereof a certified copy of a deed from Keaka to Paakuku, dated March 11, 1868, purporting to convey the whole piece of land in question. The record of this case is set out on pages 49-108 of the Transcript, and the opinion of the court is reported in 6 Hawaii, 124 (Tr., pp. 96-98).

Kahoiwai *vs.* Paakuku was a suit to partition the land of Kaonoulu, which is the same land involved in this action. In that suit complainants, the predecessors of plaintiffs in this action, claimed under the will of Keaka, and defendant, the predecessor of defendants in this action, claimed under a deed from Keaka, executed and delivered, of course, prior to her death. It was held by the Chief Justice of Hawaii that the grantee under the deed took the whole land and that consequently the claimants under the will took nothing. Final decree to that effect was entered.

It is now contended that the equity court in the partition suit was wholly without jurisdiction to try the title to land, and that consequently the decree entered in that suit was void.

This objection is now raised for the first time. It was not raised or suggested in the equity suit. On the contrary, the trial and the determination of the issue of title was with the consent of the parties. Under such circumstances the objection must now be deemed to have been waived.

Such is the rule laid down by the Supreme Court of Hawaii in Kuala *vs.* Kuapahi, 15 Hawaii, 300, where it was said:

> "It seems to be pretty well settled that, as it is variously expressed, although neither consent nor negligence will confer jurisdiction in equity where none really exists, yet, when the case is not wholly foreign to equity jurisdiction, when it is not on its face such that equity could have no jurisdiction over it, as, for example, an action to recover damages for

> an assault, or for a libel or slander, when the defect is a want of equity and not a want of power, when the objection is merely that a plain, adequate, and complete remedy at law exists or that equity is without jurisdiction in the particular case merely for some special reason or the absence of some particular element, when equity is competent to grant the relief sought, and has jurisdiction of the subject-matter, when the case is not without traces of equity jurisdiction, the question of the alleged want of jurisdiction may be waived and will be deemed to have been waived if not raised until the case comes to the appellate court."

The rule laid down by this court is the same.

In *Reynes vs. Dumont* (130 U. S., 354, 395), the opinion of this court being by Mr. Chief Justice Fuller, it was held that where the objection is one of jurisdiction in equity, because of adequate remedy at law, and is not made until the hearing on appeal, and the subject-matter belongs to the class over which a court of equity has jurisdiction, this court is not necessarily obliged to entertain such objection, even though, if taken *in limine*, it might have been worthy of attention.

In *Kilbourn vs. Sunderland* (130 U. S., 505, 514) the case just cited was followed, and it was held that where it is competent for a court of equity to grant the relief asked for, and it has jurisdiction of the subject-matter, the objection that the complainant has an adequate remedy at law should be taken at the earliest opportunity and before defendants enter upon their defense. The opinion in this case was also by Mr. Chief Justice Fuller.

In *Brown vs. Lake Superior Iron Company* (134 U. S., 530) the last two cases were quoted with approval and followed.

In *Tyler vs. Savage* (143 U. S., 79, 97) it was said by this court:

> "In recent cases in this court the subject of the raising for the first time in this court of the question

of want of jurisdiction in equity has been considered. In *Reynes vs. Dumont*, 130 U. S., 354, 395, it was said that the court for its own protection, might prevent matters properly cognizable at law from being drawn into chancery at the pleasure of the parties interested, but that it by no means followed, where the subject-matter belonged to that class over which a court of equity had jurisdiction, and the objection that the complainant had an adequate remedy at law was not made until the hearing in the appellate tribunal, that the latter could exercise no discretion in the disposition of such objection; and reference was made to 1 *Daniell's Chancery Practice*, 555, 4th Am. ed.; *Wylie vs. Coxe*, 15 How., 415, 420; *Oelrich vs. Spain*, 15 Wall., 211, and *Lewis vs. Cocks*, 23 Wall., 466. To the same effect are *Kilbourn vs. Sunderland*, 130 U. S., 505, 514; *Brown vs. Lake Superior Iron Co.*, 134 U. S., 530, 535, 536, and *Allen vs. Pullman's Palace Car Co.*, 139 U. S., 658, 662."

In the case of *In re Tyler* (149 U. S., 164, 181), the opinion of the court being by Mr. Chief Justice Fuller, it was stated:

> "That the objection of adequacy of legal authority as here presented goes to the want of equity and not to the want of power; *Reynes vs. Dumont*, 130 U. S., 354."

That is exactly the situation of the case at bar. The objection, if it can be made at all, at this time, goes to the want of equity and not to the want of power.

In *Hollins vs. Brierfield Coal and Iron Company* (150 U. S., 371, 381), in the opinion of this court rendered through Mr. Justice Brewer, it was said:

> "If there was a defense existing to the bills as framed, an objection to the right of these plaintiffs to proceed on the ground that their legal remedies had not been exhausted, it was a defense and objection which must be made *in limine*, and does not of itself oust the court of jurisdiction. This doctrine

> has been recognized not merely in the cases cited, but also in those of *Reynes vs. Dumont*, 130 U. S., 354; *Kilbourn vs. Sunderland*, 130 U. S., 505; *Brown vs. Lake Superior Iron Company*, 134 U. S., 530."

In *Insley vs. United States* (150 U. S., 512, 515) it was said in the opinion of this court that—

> "Nice distinctions were formerly drawn between actions of trespass and case, but it was never supposed that an error in that particular affected the jurisdiction of the court, or could be drawn in question collaterally. Even an objection that an action should have been brought at law instead of in equity may be waived by failure to take advantage of it at the proper time. *Wylie vs. Coxe*, 15 How., 415, 420; *Reynes vs. Dumont*, 130 U. S., 354, 395; *Clark vs. Flint*, 22 Pick., 231; *Ludlow vs. Simond*, 2 Caines' Cas., 1, 40, 56."

In the famous case of *Pollock vs. Farmers' Loan and Trust Company* (157 U. S., 420, 554) it was stated by this court, rendered through Mr. Chief Justice Fuller, as follows:

> "The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings; and, so far as it was within the power of the government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. The relief sought was in respect of voluntary action by the defendant company, and not in respect of the assessment and collection themselves. Under these circumstances, we should not be justified in declining to proceed to judgment upon the merits. *Pelton vs. National Bank*, 101 U. S., 143, 148; *Cummings vs. National Bank*, 101 U. S., 153, 157; *Reynes vs. Dumont*, 130 U. S., 354."

In the case of *Detroit vs. Detroit Citizens' St. Railway Co.* (184 U. S., 368, 381) it was stated in the opinion of the court as follows:

"Taking all these facts into consideration, and bearing in mind that the answer does not set up any defense of the lack of jurisdiction of a court of equity over the subject-matter and does not insist that there is an adequate and plain remedy at law (and no such objection has been taken at any time, and has not been insisted upon before us), we do not feel compelled, under the peculiar circumstances of the case, to ourselves take notice of it.

"It is not such a case as on its face equity could have no jurisdiction over, such as an action to recover damages for an assault, or for a libel, or slander, but the question between the parties as to the validity of various ordinances and the right of the city to enforce them, involving, as they may, the credit and possibly the solvency of the complainant, and taking into consideration the public interests involved in a speedy and final determination of the question, all these as well as other facts already mentioned, we think, make out a case for following the general rule, that a defense of this nature will not be recognized where it has not been taken by answer or in any other manner, and is not insisted upon on the hearing before the court. *Reynes vs. Dumont,* 130 U. S., 354; *Kilbourn vs. Sunderland,* 130 U. S., 505; *Brown vs. Lake Superior Iron Co.,* 134 U. S., 530.

"We do not mean to assert that in all cases of this nature, involving simply the validity of a subsequent ordinance or law, a court of equity would be the proper forum, but confine our decision to the special facts of this case, including the fact that no objection has been taken to the jurisdiction of the court at any stage of the litigation, and is not now raised by any party to the same."

In the case of *Beyer vs. Le Fevre* (186 U. S., 114, 118) it was held that the agreement of parties to submit questions to the jury, the trial before the jury and stipulation for returning the testimony for consideration is a waiver of the objection to jurisdiction. This court said on that point as follows:

> "While the pleadings and procedure are dissimilar and the rights of the parties, especially in respect to juries, are different, yet in many cases a party who appears in one branch of the court and consents to a hearing and adjudication, according to the practice there prevailing, of an issue presented by the pleadings and in respect to a subject-matter, which is within the general scope of its jurisdiction, may be estopped from thereafter and in an appellate court challenging such jurisdiction. *Reynes vs. Dumont,* 130 U. S., 354, 395. This is such a case. The determination of the title to real estate is within the scope of the general jurisdiction of a court of equity. The issue of undue influence in respect to any transaction such a court is competent to determine. The proceeding consented to, and in fact had, was practically the trial of a feigned issue out of chancery. It is too late now to raise the question of jurisdiction."

It is therefore respectfully submitted that the judgment of the lower court should be affirmed.

A. A. WILDER,
ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
Attorneys for Defendants in Error.

Supreme Court, U. S.
FILED
DEC 18 1915
JAMES D. MAHER
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IN THE

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OCTOBER TERM, 1915.

No. 120.

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vs.

MAY K. BROWN, ARTHUR M. BROWN, HER HUSBAND; BLANCHE WALKER, JOHN WALKER, HER HUSBAND, ET AL.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

MOTION TO DISMISS WRIT OF ERROR AND BRIEF IN SUPPORT THEREOF.

A. A. WILDER,
ALEX. BRITTON,
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F. W. CLEMENTS,
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Motion to Dismiss Writ of Error.

Come now the defendants in error, by their attorneys of record herein, and move this honorable court to dismiss the writ of error herein on the ground that this case is one wherein the appellate jurisdiction of this court should have been invoked by appeal and not by writ of error.

A. A. WILDER,
ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
Attorneys for Defendants in Error.

Brief in Support of Motion to Dismiss.

This case comes on writ of error from the Supreme Court of the Territory of Hawaii. Jurisdiction of this court is sought under the provisions of the act of March 3, 1905 (33 Stats., 1035), as carried into the Judicial Code, section 246, providing for appeals and writs of error from final judgments and decrees of the Supreme Court of the Territory of Hawaii in cases wherein the amount involved, exclusive of costs, exceeds the sum or value of five thousand dollars ($5,000).

The case does not come here under that portion of section 246 of the Judicial Code which provides that writs of error and appeals from the Supreme Court of the Territory of Hawaii may be taken and prosecuted here within the same time, in the same manner, under the same regulations, and in the same classes of cases in which writs of error and appeals from the final judgments and decrees of the highest court of a State in which a decision in the suit could be had may be taken and prosecuted to this court. Accordingly, the provisions of section 237 of the Judicial Code do not apply here, and hence the form or manner in which the case should have been brought to this court is controlled, not by section 237 of the Code, but by the provisions of the act of April 7, 1874 (18 Stats., 27).

Section 2 of the act of April 7, 1874, provides:

> "That the appellate jurisdiction of the Supreme Court of the United States, over the judgments and decrees of said territorial courts, in cases of trial by jury, shall be exercised by a writ of error, and in all other cases by appeal, according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe. * * *"

This was an action to quiet title, and as such an action at law under the territorial statutes. It was tried jury waived (Trans., p. 6).

Section 2085 of the Revised Laws of Hawaii of 1905, which was in effect when this action was instituted, provided as follows:

> "Action may be brought in any of the circuit courts by any person against another person who claims adversely to the plaintiff an estate or interest in real property for the purpose of determining such adverse claim."

That section unamended is now section 2750 of the Revised Laws of Hawaii of 1915.

In Flores *vs.* Maka, 11 Hawaii, 512, 514, the action under the statute just quoted was held by the Supreme Court of Hawaii to be one at law and that a judgment at law be entered in such a case.

It is well established that the appellate jurisdiction of this court over the judgment of a territorial court in a case where there was no trial by jury is by appeal, and by appeal only. Stringfellow *vs.* Cain (99 U. S., 610.)

In Hecht *vs.* Boughton (105 U. S., 235) there was a writ of error to the Supreme Court of the Territory of Wyoming to bring up for review the judgment in a suit where there was not a trial by jury. Motion to dismiss was made on the ground that the case should have been brought by appeal and not by writ of error. Mr. Chief Justice Waite, after quoting the provisions of the act of April 7, 1874, said (page 236):

> "This statute seems to us conclusive of the present motion. In allowing legal and equitable remedies to be sought in the same action before the territorial courts, Congress saw fit to establish an inflexible rule

> by which it could be determined whether a case should be brought here from those courts for review by writ of error or appeal, and provided that cases tried by a jury should come on writ of error, and all others by appeal. This makes the form of proceeding depend on the single fact of whether there has been, or not, a trial by jury. Stringfellow *vs.* Cain, 99 U. S., 610."

Again, at that same term, in the case of United States *vs.* Railroad Company (105 U. S., 263), in which there was an agreed statement of fact, this court, through the Chief Justice, held that, as there had been no trial by jury, the case was controlled by Hecht *vs.* Boughton, and should have been brought here by appeal and not by writ of error.

Story *vs.* Black (119 U. S., 235) was an action to try title to real estate, which was tried jury waived. It came to this court on writ of error, and the contention was made by counsel for plaintiff in error that, although a jury was waived and the issues of fact tried by the court under authority of the territorial statute, the case was a case "of trial by jury" under that statute and within the meaning of the act of 1874, and therefore was properly here on writ of error. It was further contended that the case being purely legal, cognizable solely at law, and as the territorial statute required the trial of the case by jury unless there was a waiver, then the case was one "of trial by jury" within the meaning of that phrase in the act of 1874. The court, however, following Hecht *vs.* Boughton and United States *vs.* Railroad Company, *supra*, through Mr. Chief Justice Waite, said (page 236):

> "This is a writ of error to the Supreme Court of the Territory of Montana to bring up for review the judgment in a suit where there was not a trial by jury, under the act of April 7, 1874, c. 80, §2, 18 Stat., 27, the case should have been brought up by appeal, and the writ of error is therefore dismissed. Hecht *vs.* Boughton, 105 U. S., 235; United States *vs.*

> Railroad Co., 105 U. S., 263; Woolf *vs.* Hamilton, 108 U. S., 15. The question is no longer open in this court. The statutory rule is jurisdictional."

The other authority cited in that opinion, that of Woolf *vs.* Hamilton (108 U. S., 15), was a case which was not tried in the court below by a jury. In dismissing the writ of error accordingly, this court held that the fact that the case was not tried by a jury made it necessary, under the act of 1874, to bring the judgment here for review by appeal, and not by writ of error.

In Bonnifield *vs.* Price (154 U. S., 672), the court, speaking through the Chief Justice, said:

> "This is a writ of error to bring here for review a judgment of the Supreme Court of the Territory of Wyoming in a case where the trial was not by a jury. It is therefore dismissed on the authority of Hecht *vs.* Boughton, 105 U. S., 235, decided at the present term. The appropriate remedy in this case, under the act of April 7, 1874, ch. 80, Sup. Rev. Stat., 12, was by appeal.
>
> "But if we could treat this writ of error as an appeal the case is in no condition for examination here, because there is no such statement of facts in the record as the law requires. The bill of exceptions taken in the District Court contains all the evidence, and as the Supreme Court directed a judgment in favor of the defendant, it is clear that court passed on other questions than such as were presented on the rulings in the admission of evidence. Under these circumstances a statement of facts such as the statute requires is necessary to enable us to re-examine the case. The writ is dismissed."

In Porto Rico *vs.* Immanuel, 235 U. S., 251, which was tried jury waived, this court said (page 255):

> "The motion to dismiss is based upon the further ground that the case, being an action at law, should have been brought to this court by writ of error, and

not by appeal. But the provisions of the act of 1874, above mentioned, render it clear that in legal as well as in equitable actions the proceedings for review must be by appeal, unless there was a trial by jury. The motion to dismiss is therefore denied."

Ever since the passage of the act of March 3, 1905, heretofore referred to, every case that has been brought to this court from the Supreme Court of Hawaii, where the jurisdiction of this court depended, as it does in the case at bar, on the amount involved, has been brought here according to the provisions of the act of April 7, 1874, by appeal, except where there was a jury trial.

We believe it unnecessary to cite further authority in support of the motion, and we hence respectfully submit that the writ of error should be dismissed.

A. A. WILDER,
ALEX. BRITTON,
EVANS BROWNE,
F. W. CLEMENTS,
Attorneys for Defendants in Error.

HAPAI *v.* BROWN.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

No. 120. Argued December 17, 1915.—Decided January 10, 1916.

Where there is no doubt that the import of the decree pleaded as *res judicata* to a bill to quiet title was to the effect that plaintiff in the former action had no title to the property, the inquiry in the subsequent action is narrowed to the question of jurisdiction of the court rendering the decree pleaded.

This court will not presume that the highest court of the Hawaiian Islands did not know its own powers or did not decide in accordance with law of the Kingdom. *John Ii Estate* v. *Brown*, 235 U. S. 342.

This court affirms the decision of the Supreme Court of the Territory of Hawaii holding that the determination of the Supreme Court of the Hawaiian Islands in a suit for partition made without any objection by any of the parties and not appealed from is valid and binding upon, and *res judicata* as to, the same parties and their privies in a subsequent suit involving the same land.

Even though the party making a motion to dismiss for want of jurisdiction does not press it, this court is not at liberty to disregard it.

When, owing to confusion in the statutes, there is doubt as to whether appeal or writ of error is the proper course, this court will, if possible, save a party's rights from being lost by mistake in technicalities, and so *held* that, under § 246, Judicial Code, writ of error was the proper course to review the judgment of the Supreme Court of Hawaii in a case involving over $5000 in which trial by jury was waived.

21 Hawaii, 756, affirmed.

THE facts, which involve the validity of a judgment of the courts of the Territory of Hawaii in an action affecting title to a tract of land in that Territory, are stated in the opinion.

Mr. Lorrin Andrews for plaintiff in error.

Mr. A. A. Wilder, with whom *Mr. Alexander Britton*, *Mr. Evans Browne* and *Mr. F. W. Clements* were on the brief, for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to quiet title to an undivided 29/36 of the ahupuaa of Koanoulu, a large tract of land in the Island of Maui, Territory of Hawaii. The plaintiffs claim through the children of one Keaka other than one daughter, Paakuku, through whom the defendants claim the whole tract.

One of the defences was *res judicata*. The proceeding relied upon as having decided the relative rights of the parties was a bill brought in November, 1871, by the plaintiffs' predecessors against Paakuku and others, alleging title in Keaka during her life; a devise by her to her heirs, followed by joint possession on the part of the plaintiffs and of Paakuku as quasi-trustee; and waste, a wrongful sale and a wrongful lease by Paakuku. The bill prayed for an account from Paakuku, that the sale and lease be ordered to be cancelled as against the plaintiffs, and that a partition be decreed. Paakuku's answer set up a conveyance of the premises by Keaka to her in fee and continuous possession by her since the date of the same. It also alleged that Keaka's will, if not overriden by the subsequent deed, devised the land to Paakuku in fee, subject to some merely personal and revocable rights in some of the plaintiffs.

The case was tried in the Supreme Court before the Chief Justice. On October 1, 1874, a Minute was entered: "The opinion of the Court is that the Petitioners have no title to the lands of Kaonoulu and Kaluapulu and so adjudge. There is no controversy about the title of the land at Wailuku and the petition for partition of that land is hereby granted and decreed accordingly." An opinion filed two days later discusses the title, decides that the deed alleged by Paakuku is freed from every suspicion, and repeats the language of the Minute. On October 12 it was decreed that the plaintiffs take nothing by their bill. The Supreme Court in the present case expressed the opinion which, apart from the deference due to it upon a local matter, does not require argument to support it, that the intention and meaning of the decree of October 12 was to dismiss the bill on the ground that the plaintiffs had not the title alleged. It therefore affirmed a judgment for the defendants holding that the plaintiffs were concluded by the former decree. The only point, if any, that can be argued, is that in general a bill for partition cannot be made a means of trying a disputed title, *Clark* v. *Roller*, 199 U. S. 541, 545, and that therefore the decree should be taken to be a dismissal for want of jurisdiction, or at least allowed no greater effect than if it had gone on that ground.

But, as we cannot doubt the import of the decree when rendered, we are narrowed in our inquiry to the question of jurisdiction in an accurate sense. Unless we are prepared to pronounce the decree void for want of power to pass it and open to collateral attack, the decision in this case must stand. But there was no inherent difficulty, no impossibility in the nature of things or for want of physical power, in the attempt to decide title in the suit of 1871. And as was observed at the last term, it would seem surprising to suggest that the highest Court in the Hawaiian Islands did not know its own powers, or decide in accord-

ance with the requirements of the law of which that Court was the final mouthpiece. *John Ii Estate* v. *Brown*, 235 U. S. 342, 349. The plaintiffs in the former case in no way protested against the trial of their title, but on the contrary sought relief distinct from partition, that made the trial necessary. Even if we were disposed to go behind the decisions of the Chief Justice of the Kingdom and of the highest Court of the Territory upon a matter like this it would seem to us as unreasonable to hold the adjudication of title void because partition was prayed as to hold it void because the decree was made upon a multifarious bill. The cases where objections to the jurisdiction, though taken in the cause, have been held to have been waived go farther than we have to go here. We will not speculate as to how extreme a case must be to produce a different result; it is enough that this is far from the line.

The defendants in error filed a motion to dismiss, which, in view of our opinion upon the merits they probably would not care to press but which we are not at liberty to disregard. The case is brought here by writ of error, whereas, it is said, it should have been brought up by appeal. By § 246 of the Judicial Code of March 3, 1911, c. 231, 36 Stat. 1087, 1158, writs of error and appeals from the final judgments and decrees of the Supreme Court of Hawaii may be taken 'in the same manner, under the same regulations, and in the same classes of cases, in which' they may be taken from the final judgments and decrees of the court of a State, 'and also in all cases wherein the amount involved, exclusive of costs, . . . exceeds the sum or value of five thousand dollars.' The present suit comes here under the last clause, at the trial a jury was waived, and the proposition is that the earlier provisions of the section do not govern this clause but that, except when there is a trial by jury, the cases there mentioned must be brought to this Court by appeal under the Act of April 7, 1874, c. 80, § 2, 18 Stat. 27. It is said that

this has been the practice. See, e. g. *Wm. W. Bierce, Ltd.*, v. *Hutchins*, 205 U. S. 340. Whether or not the incidental assumption in that decision that an appeal would lie was correct, we are of opinion that the proceeding by writ of error was justified by the plain meaning of § 246. So far as the policy of Congress might permit, (see Act of March 3, 1915, c. 90, § 274b, 38 Stat. 956,) we should be disposed to be a little astute to save a party's rights from being lost through mistakes upon a technical matter in the somewhat confused condition of the statutes. But we cannot doubt that the path adopted was right.

Judgment affirmed.